SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 770

TED STEVEN CHIMEL, PETITIONER,

vs.

CALIFORNIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

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[Tr. 1] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

TED STEVEN CHIMEL, Defendant.

No. C-16098

INFORMATION—Filed October 29, 1965

Count I: The District Attorney of the County of Orange, by this Information, hereby accuses Ted Steven Chimel of a Felony, to-wit: Violation of Section 459 of the Penal Code of the State of California (Burglary), in that on or about the 2nd day of February, 1965, in the County of Orange, State of California, the said Ted Steven Chimel did willfully, unlawfully, feloniously and burglariously enter a house in [Tr. 2] the possession of and under the control of Vito L. Pulati, located at 1303 South Flower Street, Santa Ana, in said County and State, with intent to commit theft.

Count II: And the said Ted Steven Chimel is hereby further accused by the District Attorney of the County of Orange, by this second count of this Information, of a Felony, to-wit: Violation of Section 496 of the Penal Code of the State of California (Receiving Stolen Property), in that on or about the (14 day of September, 1965, [initialed by M]) in the County of Orange, State of California, the said Ted Steven Chimel did willfully, unlawfully and feloniously conceal and withhold from the owner certain property, to-wit: coins and medals, which had been stolen, knowing the same to have been stolen.

Count III: And the said Ted Steven Chimel is hereby further accused by the District Attorney of the County of Orange, by this third count of this Information, of a Felony, to-wit: Violation of Section 459 of the Penal Code of the State of California (Burglary), in that on or about the 14th day of August, 1965, in the County of Orange, State of California, the said Ted Steven Chimel did will-

fully, unlawfully, feloniously and burglariously enter a building known as The Money Vault, located at 153 North Glassell Street, Orange, in said County and State, with intent to commit theft.

The offenses charged in the first, second and third counts of this Information were connected together in their [Tr. 3] commission.

Contrary to the form, force and effect of the Statute in such cases made and provided, and against the peace and dignity of the people of the State of California.

Dated this 29th day of October, 1965.

Kenneth Williams, District Attorney of the County of Orange, State of California. By ——, ——, Deputy District Attorney.

Clerk's Note:

Additions, deletions or interlineations appearing in the foregoing instrument and the initials that appear thereon have been set forth in parentheses and brackets.

[Tr. 4] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE

Dept. 2

Court convened at 9:30 A.M. October 29, 1965, present Hon. WILLIAM MURRAY, Judge; M. F. Norris; Stanford E. Shaw, Deputy Clerk; Jesse V. Hardy, Deputy Sheriff; Ester Resnick, Reporter; and the following proceedings were had:

C-16098

PEOPLE

vs.

CHIMEL

Hearing re: Arraignment

Defendant in court without counsel. People represented by Kenneth Williams, District Attorney. Information presented to the defendant and ordered filed. Defendant advised of his legal rights. Defendant arraigned. Hearing re: answer to arraignment continued to November 12, 1965 at 9:30 A.M. in Department 2. Defendant instructed to obtain private counsel. The Court finds that defendant does not qualify for the Public Defender.

Entered 11-1-65. Book 272 Page 357.

* * * * *

[Tr. 6] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE

Dept. 2

Court convened at 1:30 P.M. November 19, 1965, present Hon. WILLIAM L. MURRAY, Judge; Stanford E. Shaw, Deputy Clerk; Jesse V. Hardy, Deputy Sheriff; Ester Resnick, Reporter; and the following proceedings were had:

C-16098

PEOPLE

vs.

CHIMEL

Hearing re: Motion under Section 995 Penal Code.

Defendant in court with counsel, R. Tuller. People represented by M. Capizzi, Deputy District Attorney. Motion by the defendant under Section 995 Penal Code denied. To the Information, defendant now pleads not guilty to the offense charged in Counts 1, 2, and 3. Defendant waived statutory time for trial. Case set for trial on February 7, 1966 at 9:00 a.m. in Department 5. Defendant demands trial by jury.

Entered 11-24-65. Book 272 Page 712.

* * * * *

[Tr. 13] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE

Dept. 1

Court convened at 9:50 A.M. March 14, 1966, present Hon. H. C. CAMERON, Judge; David T. DeAtley, Deputy Clerk; R. J. Haeckel, Deputy Sheriff; William C. Barnett, Reporter; and the following proceedings were had:

C-16098

PEOPLE

vs.

CHIMEL

This case came on regularly for trial. In open court. Defendant in court with counsel Robert K. Tuller. People represented by James G. Enright, Deputy District Attorney. Defendant personally withdraws his plea of not guilty to Count 1 and waives jury as to Count 1. Defendant now enters a plea of guilty to Count 1 and requests permission to file application for probation. Permission granted. Hearing re: probation report and pronouncement of judgment set for April 7, 1966 at 1:30 p.m. in Department 2. Counts 2 and 3 continued until April 7, 1966 to be disposed of at probation hearing.

Entered 3-18-66. Book 251 Page 689.

[Tr. 14] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE

Dept. 2

Court convened at 1:30 P.M. April 7, 1966, present Hon. ROBERT GARDNER, Judge; Perry A. Stewart, Deputy Clerk; L. A. Brussow, Deputy Sheriff; Lecil Slaback, Reporter; and the following proceedings were had:

C-16098

PEOPLE

vs.

CHIMEL

Hearing re Probation and pronouncement of judgment as to Count 1 and further disposition as to Counts 2 and 3. Defendant in court with counsel R. Tuller. People represented by James Enright, Deputy District Attorney. Motion by the defendant to withdraw plea of guilty as to Count 1 of information. Motion granted. Defendant withdrew plea of guilty to Count 1 of information and to the information, as to Count 1, now pleads not guilty to Count 1 of information. Counsel for defendant moved to be relieved as counsel. Motion granted. Defendant ordered to report back to this court on April 22, 1966 with counsel. Trial setting will be accomplished at that time.

Entered 4-12-66. Book 287 Page 1124.

* * * * *

[Tr. 16] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE

Dept. 2

Court convened at 1:30 P.M. April 22, 1966, present Hon. ROBERT GARDNER, Judge; Perry A. Stewart, Deputy Clerk; L. A. Brussow, Deputy Sheriff; Lecil Slaback, Reporter; and the following proceedings were had:

C-16098

PEOPLE

vs.

CHIMEL

Hearing re: trial setting.

Defendant in court with counsel K. Monroe. People represented by A. A. Wells, Deputy District Attorney. Defendant waived statutory time for trial. Case set for trial on June 13, 1966 at 9:00 a.m. in Department 5. Defendant demands trial by jury.

Entered 4-26-66. Book 294 Page 87.

* * * * * *

[Tr. 19] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE

Dept. 5 Extra Ses.

Court convened at 9:15 A.M. July 5, 1966, present Hon. DAVID D. FRENCH, Assigned, Judge; E. Parry Hagen, Deputy Clerk; John F. Kinyon, Deputy Sheriff; William Macauley, Reporter; and the following proceedings were had:

C-16098

PEOPLE

vs.

CHIMEL, Ted Steven

This case came on regularly for trial. In open court. The defendant Ted Steven Chimel in court with counsel Keith Monroe. The People represented by James Enright, Deputy District Attorney. Roll call of the jurors heretofore having been made in Department 7, the prospective jurors present were sworn for examination. Twelve names were drawn to fill the jury box. Voir Dire commenced. Robert L. Skavland was excused by the court. Robert L. Long was excused for cause by the defendant. Elaine F. Hillis was excused for cause by the defendant. Riley Huber was excused for cause by the defendant. Savilla R. Butler was excused for cause by the defendant. Joel K. Williams was excused for cause by the People. Harry A. Rush was excused for cause by the defendant. The following twelve prospective jurors were sworn to try this case. Garland H. Baker; Phillip L. Miller; Lyle C. Gainsley; William C. Rasmussen; Earl L. Brown; Aloys P. Raupp; Marjorie E. Bauer; Lee A. Wotipka; Gladys E. Butte; John E. Koster; Lorraine Y. Tardiff; and Jerrold V. Henning. The [Tr. 20] court admonished the jury and declared a recess. In chambers during the recess, the Court, counsel, clerk, and reporter present. Objection by the defendant to the Court's jurisdiction over Count II of the Information. Arguments by counsel. The tentative ruling of the court is that the trial will proceed as to all three counts unless Authorities can be submitted to the contrary. The Court orders counsel to return to court at 1:30 P.M. this date. In open court. The jury

present and in the jury box. The defendant present in court with counsel. The people duly represented. The Court admonished the jury and declared a recess for the jury until 10:00 A.M. July 6, 1966. The Court orders the witness Bert R. Slocum to return also at that time with all records pertaining to this case. In chambers at 2:20 P.M. this date, Court, counsel, clerk, reporter and defendant present. Legal discussion regarding Count II of the Information entered into. The Court ruled that the trial would proceed as before on all counts presented in the Information. Trial recessed until 10:00 A.M. July 6, 1966.

Entered 7-7-66, Book 301 Page 1077.

* * * * *

[Tr. 26] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE

Dept. 5 Extra Session sitting in Dept. 11.

Court convened at 9:45 A. M. July 11, 1966, present Hon. DAVID D. FRENCH, Assigned, Judge; McDonald Worley, Deputy Clerk; William Phillips, Deputy Sheriff; William R. Macaley, Reporter; and the following proceedings were had:

C-16098

PEOPLE

vs.

CHIMEL

In open court in the absence of the jury. Defendant in court and represented by counsel. People represented by Deputy District Attorney James G. Enright. Counsel for the defendant made a motion for a mistrial. Motion argued. Motion denied. The Court declared a recess. In open court defendant and counsel in court. People represented by Deputy District Attorney James G. Enright. Jury present and in the jury box. Thomas L. Del Coma was recalled to the stand. Two satchels were received and ordered marked People's exhibits No. 11 and No. 12 respectively for identification. People's No. 11 and No. 12 for identification were introduced and ordered filed and marked People's exhibits No. 11 and No. 12 respectively. Two envelopes from exhibit No. 11 were introduced and ordered filed and marked exhibit No. 11-A. The Court admonished the jury and declared a recess until 1:30 P.M. In open court defendant in court and represented by counsel. People represented by Deputy District Attorney James G. Enright. Jury present and in the jury box. [Tr. 27] Kenneth R. Barton was sworn and testified. Thomas L. Del Coma was recalled to the stand. Evaline Pulati was recalled to the stand. A brown box containing loose coins was received and ordered marked People's exhibit No. 12-A for identification. A brown box with a loose, "Press-Seal" inside was received and ordered marked People's exhibit No. 13 for identification. A red coin wallet was received and ordered marked People's exhibit 12-B for identification.

Vito Louis Pulati was recalled to the stand. People rests. The Court admonished the jury and declared a recess until 9:30 A. M. July 12, 1966.

Entered 7-14-66. Book 304 Page 54.

* * * * *

[Tr. 31] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE

No. C-16098

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

TED STEVEN CHIMEL, Defendant

REQUEST FOR JURY INSTRUCTIONS—Filed July 13, 1966

* * * * *

[Tr. 33] 1. (Revised)

JURY TO BE GOVERNED BY INSTRUCTIONS AND BY EVIDENCE

Ladies and Gentlemen of the July:

It becomes my duty as judge to instruct you concerning the law applicable to this case, and it is your duty as jurors to follow the law as I shall state it to you.

The function of the jury is to determine the issues of fact that are presented by the allegations in the information [indictment] filed in this court and the defendant's plea of "not guilty". This duty you should perform uninfluenced by pity for a defendant or by passion or prejudice against him. You must not suffer yourselves to be biased against a defendant because of the fact that he has been arrested for this offense [these offenses], or because an information [indictment] has been filed against him, or because he has been brought before the court to stand trial. None of these facts is evidence of his guilt, and you are not permitted to infer or to speculate from any or all of them that he is more likely to be guilty than innocent.

Therefore, in determining the guilt or innocence of the defendant you are to be governed solely by the evidence introduced in this trial and the law as stated to you by the Court. For such purpose the law forbids you to be governed by mere sentiment, conjecture, sympathy, passion, prejudice, [Tr. 34] public opinion or public feeling. Both the People and the defendant have a right to demand, and they do demand and expect, that you will conscientiously and

dispassionately consider and weigh the evidence and apply the law of the case, and that you will reach a just verdict [as to each count charged], regardless of what the consequences of such verdict may be. Such verdict must express the individual opinion of each juror.

Requested by Defendant X

French, Judge.

[Tr. 35] 2 (Revised)

RE STATEMENTS OF COUNSEL—RULINGS ON EVIDENCE

EVIDENCE STRICKEN OUT—INSINUATIONS OF QUESTIONS

You are the exclusive judges of the facts and of the effect and value of the evidence, but you must determine the facts from the evidence received here in court.

You must not consider as evidence any statement of counsel made during the trial; however, if counsel for the parties have stipulated to any fact, you will regard that fact as being conclusively proved.

As to any question to which an object was sustained, you must not speculate as to what the answer might have been or as to the reason for the objection.

You must not consider for any purpose any offer of evidence that was rejected, nor any evidence that was stricken out by the court; such matter is to be treated as though you had never heard it.

You must never speculate to be true any insinuation suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

Requested by Defendant X

French, Judge.

* * * * *

6.

[Tr. 39] Re Rulings on Objections to Evidence

At times throughout the trial the court has been called upon to pass on the question whether or not certain offered evidenced might properly be admitted. You are not to be concerned with the reasons for such rulings and are not to draw any inferences from them. Whether offered evidence is admissible is purely a question of law. In admitting evidence to which an objection is made, the court does not determine what weight should be given such evidence; nor does it pass on the credibility of the witness. [As to any offer of evidence that has been rejected by the court, you, of course, must not consider the same; as to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.]

Requested by Defendant V

French, Judge.

* * * * *

[Tr. 42] 21. (Revised)

PRESUMPTION OF INNOCENCE, REASONABLE DOUBT, BURDEN OF PROOF

22. (Revised)

DEMONSTRATION NOT REQUIRED

A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal. This presumption places upon the State the burden of proving him guilty beyond a reasonable doubt. Reasonable doubt is defined as follows: It is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

The law does not require demonstration or that degree of proof which, excluding all possibility of error, produces absolute certainty, for such degree of proof is rarely possible. Moral certainty only is required, which is that degree of proof which produces conviction in an unprejudiced mind.

Requested by Defendant √

French, Judge.

* * * * *

[Tr. 45] 26. (1965 Revision)

CIRCUMSTANTIAL EVIDENCE

Where the case of the People rests substantially or entirely on circumstantial evidence, you are not permitted to find the defendant guilty of the [any] crime charged against him unless the proved circumstances are not only consistent with the theory that the defendant is guilty of the crime, but cannot be reconciled with any other rational conclusion and each fact which is essential to complete a set of circumstances necessary to establish the defendant's guilt has been proved beyond a reasonable doubt.

Also, if the evidence [as to any particular count] is susceptible of two reasonable interpretations, one of which points to the defendant's guilt and the other to his innocence, it is your duty to adopt that interpretation which points to the defendant's innocence, and reject the other which points to his guilt. If, on the other hand, one interpretation of the evidence appears to you to be reasonable and the other interpretation to be unreasonable, it would be your duty to accept the reasonable interpretation and to reject the unreasonable.

Requested by People X

Requested by Defendant X

Given on Court's Motion X

French, Judge.

* * * * *

[Tr. 47] 29. (Re-revised)

DEFINITIONS OF ADMISSION AND CONFESSION

A statement made by a defendant other than at his trial may be either an admission or a confession.

An admission is a statement by a defendant, which by itself is not sufficient to warrant an inference of guilt, but which tends to prove guilt when considered with the rest of the evidence.

A confession is a statement by a defendant which discloses his intentional participation in the criminal act for which he is on trial and which discloses his guilt of that crime.

You are the exclusive judges as to whether an admission or a confession was made by the defendant and if the statement is true in whole or in part. If you should find that such statement is entirely untrue, you must reject it. If you find it is true in part, you may consider that part which you find to be true.

Requested by Defendant V

French, Judge.

[Tr. 48] 29-A. (Re-revised)

ONLY A VOLUNTARY ADMISSION OR CONFESSION MAY BE CONSIDERED BY JURY

In determining the innocence or guilt of the defendant, you must not consider any admission or confession unless it was voluntarily made.

The test of voluntariness of a statement of a defendant relative to the offense charged is whether or not the defendant exercised mental freedom in making the statement.

A statement of a defendant is involuntary when it is the result of any form of direct or indirect physical or mental coercion or compulsion or is obtained by any violence or express or implied threats of harm.

A statement is likewise involuntary if it is obtained by any express or implied promises of immunity or benefit, or by any improper influence which induces in the mind of the defendant the belief or hope that he would gain or benefit or be better off by making a statement, when such inducement originates with a law enforcement officer. A statement made under a hope or belief of benefit is not involuntary if such hope or belief originated in the mind of the defendant himself, or was induced by the advice or suggestion of a relative, attorney, or other person not connected with law enforcement.

Where there is a conflict in the evidence, it is for the jury to decide whether the statement was made voluntarily [Tr. 49] or involuntarily, and in making this determination the jury should govern its action by the same rules as to weighing the evidence and credibility of witnesses as apply to the determination of any of the issues in the case.

Requested by Defendant V

French, Judge.

[Tr. 50] 29-C. Alternate

CORPUS DELICTI MUST FIRST BE PROVED

The guilt of a defendant may not be established alone by any confession or admission made by him outside of this trial. Before any person may be convicted of a criminal offense, there must be proof, independent of any such statement, that the crime in question was committed, but it is not necessary that such independent proof include proof as to identify of the person by whom such offense was committed.

Requested by Defendant √

Given as Requested √

French, Judge.

[Tr. 51] 29-D. (Re-revised)

CAUTIONARY INSTRUCTION; ORAL ADMISSION OR CONFESSION

Evidence of an oral admission or confession of the defendant ought to be viewed with caution.

Requested by Defendant √

French, Judge.

[Tr. 52] (Two Pages) 52. (Revised) (Page One)

CREDIBILITY OF WITNESSES AND PRESUMPTION OF TRUTH

Every person who testifies under oath is a witness. You are the sole and exclusive judges of the credibility of the witnesses who have testified in this case.

In judging the credibility of witnesses, you shall have in mind the law that a witness is presumed to speak the truth. A witness, however, may be impeached and this presumption overcome by contradictory evidence; by the manner of the witness on the stand; the degree of intelligence exhibited by him; the character of his testimony; by evidence showing his motive or interest in the outcome of the case or his bias or prejudice for or against one of the parties; by evidence that on some former occasion he made a statement or statements inconsistent with his present testimony;/[by evidence adversely affecting the character of the witness for truth, honesty, or integrity; or by proof that he has been convicted of a felony./] You will note that I do not say that any of the matters I have mentioned do overcome the presumption that the witness is speaking the truth; I only say that they may overcome that presumption. It is for you to decide whether they do or do not.

The impeachment of a witness does not necessarily mean that his testimony is completely deprived of value, or that its value is destroyed in any degree. The effect, if any, of the impeachment upon the credibility of the witness is [Tr. 53] for you to determine.

A witness wilfully false in one material part of his testimony is to be distrusted in others. You may reject the whole testimony of a witness who wilfully has testified falsely as to a material point, unless, from all the evidence, you shall believe the probability of truth favors his testimony in other particulars.

However, discrepancies in a witness's testimony or between his testimony and that of others, if there were any, do not necessarily mean that the wit- (cont'd)

(Two Pages) 52. (Revised) (Page Two)

CREDIBILITY OF WITNESSES AND PRESUMPTION OF TRUTH

ness should be discredited. Failure of recollection is a common experience; and innocent misrecollection is not uncommon. It is a fact, also, that two persons witnessing an incident or a transaction often will see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance.

Requested by Defendant ✓

Given as Modified ✓

French, Judge.

* * * * *

[Tr. 61] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE

Dept #5 extra sessions Sitting in Dept #3.

Court convened at 9:30 A. M. July 13, 1966, present Hon. DAVID D. FRENCH, Assigned, Judge; McDonald Worley, Deputy Clerk; William Phillips, Deputy Sheriff; William Macauley, Reporter; and the following proceedings were had:

C-16098

PEOPLE

vs.

CHIMEL

In open court. Defendant in court with counsel Keith C. Monroe. People represented by James G. Enright, Deputy District Attorney. Jury present and in the jury box. It was stipulated by and between counsel that defendant could reopen for a limited purpose. Ted S. Chimel was recalled to the stand. An empty red coin purse was introduced and ordered filed and marked defendant's exhibit B. Defense rests. Argument continued and concluded. The court instructed the jury. The jury retired at 10:32 A.M., in charge of an officer duly sworn for that purpose for deliberation. The jury returned at 3:50 P.M. with following verdicts: In the Superior Court of the State of California in and for the County of Orange The People of the State of California, Plaintiff, vs Ted Steven Chimel, Defendant. No. C-16098 Verdict We, the Jury in the above entitled action find the Defendant, Ted Steven Chimel Guilty of the crime of Felony, to-wit: Violation of Section 459 of the Penal Code of the State of California (Burglary), as charged in Count I of the [Tr. 62] Information, and fix the degree thereof as First Degree. July 13, 1966 John E. Koster Foreman. In the Superior Court of the State of California in and for the County of Orange The People of the State of California, Plaintiff, vs Ted Steven Chimel, Defendant. No. C-16098 Verdict We, the Jury in the above entitled action find the Defendant, Ted Steven Chimel, Guilty of the crime of Felony, to-wit: Violation of Section

459 of the Penal Code of the State of California (Burglary), as charged in Count III of the Information, and fix the degree thereof as Second Degree. July 13, 1966 John E. Koster, Foreman. Defendant in court with counsel Keith C. Monroe. People represented by James G. Enright, Deputy District Attorney. The clerk read the verdicts to the jury and asked them if this was their verdict, to which they replied in the affirmative. The Court ordered the verdicts polled. To the question, "is this your verdict" twelve jurors answered in the affirmative to each verdict. The Court ordered the clerk to enter the verdicts. The Court discharged the jury. Defendant made oral application for probation. The Court granted application for probation. Hearing re: Probation and pronouncement of judgment set for July 29, 1966 at 9:00 A.M. in this department. Defendant ordered to appear at that time. Court ordered present bail as set, deemed sufficient.

Entered 7-19-66. Book 304 Page 200.

[Tr. 63] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE

No. C-16098

The People of the State of California, Plaintiff,

vs.

TED STEVEN CHIMEL, Defendant.

VERDICT—Filed July 13, 1966

We, the Jury in the above entitled action find the Defendant, TED STEVEN CHIMEL, Guilty of the crime of Felony, to-wit: Violation of Section 459 of the Penal Code of the State of California (Burglary), as charged in Count I of the Information, and fix the degree thereof as First Degree.

John E. Koster, Foreman.

Dated: July 13, 1966.

[Tr. 64] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE

No. C-16098

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

TED STEVEN CHIMEL, Defendant.

VERDICT—Filed July 13, 1966

We, the Jury in the above entitled action find the Defendant, TED STEVEN CHIMEL, Guilty of the crime of Felony, to-wit: Violation of Section 459 of the Penal Code of the State of California (Burglary), as charged in Count III of the Information, and fix the degree thereof as Second Degree.

John E. Koster, Foreman.

Dated: July 13, 1966

[Tr. 65] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE

No. C-16098

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

TED STEVEN CHIMEL, Defendant.

MEMORANDUM IN SUPPORT OF MOTION FOR DECLARATION OF MISTRIAL—Filed July 14, 1966

Facts: The Plaintiff has introduced, over Defendant's 4th Amendment objections, evidence that searches were made of Defendant's home on September 14 (14?), 1965 and on September 15 (16?), 1965. Oral evidence has been given that these searches were made under the authority of a warrant or warrants of arrest issued by the Judge now trying the case while sitting as a Magistrate in Santa Ana-Orange Municipal Court. Oral evidence has been given as to the facts that certain items were seized, over Defendant's objection, from the bedroom of his home in the course of these searches. Additional oral evidence has been given that the property seized in these searches was then identified, in part, by the victims of one of the robberies charged as their property.

Authorities and Argument: Inasmuch as the question here involved calls into question the constitutional validity of two existing sections of the penal code and in addition calls into question a practice which has been widespread, if not [Tr. 66] universal, in application in California since 1951, and probably for many years prior to that time, it seems appropriate to begin with a brief historical review.

The touchstone, of course, must be the Fourth Amendment to the United States Constitution:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article I, Section 19, of the Constitution of the State of California is a verbatim repetition of the federal provision except only that the State version uses the phrase "But *on* probable cause", a difference which is of no significance. The provisions of the State Constitution were implemented by the provisions of Penal Code sections 806 through 814, which appeared in the code at the time of its enactment in 1872 and remained substantially unchanged until the revision of 1951 (Stat. 1951, Ch. 1674.) However, the revision of 1951 was little more than a legislative affirmation of a departure from the earlier provisions which the courts had sanctioned for many years. See, e.g. *People* v. *Staples* (1891) 91 Cal. 23.

Originally, the code had provided that the complaint [Tr. 67] (then referred to as the "Information") is the allegation in writing made to a magistrate that a person has been guilty of some designated offense. Penal Code 806 (1872). A magistrate, then as now, was defined as an officer having power to issue a warrant for the arrest of a person charged with a public offense. Penal Code 807. The magistrate's duty, upon receiving an information, was to examine under oath the informant or prosecutor, take their depositions in writing and have the party or parties deposed sign the deposition. Penal Code 811 (1872). The depositions so taken must set forth the facts tending to establish the commission of the offense and the guilt of the defendant. Penal Code 812 (1872). Then, if the magistrate were satisfied *therefrom* that an offense had been committed and that the defendant accused had committed it, he must issue a warrant of arrest. Penal Code 813 (1872). Notably, that procedure was very similar to that which obtains in the Federal Courts today, with the exception that under present practice the affidavit of the informant or prosecutor is used in place of the deposition mentioned in Penal Code 813. See Federal Rules of Criminal Procedure 3 and 4.

The California courts soon began to find simpler means of dealing with the issuance of warrants. *People* v. *Staples, supra,* for example, held in 1891 that a verified complaint which is positive and direct in its allegation of every fact necessary to support the charge was a sufficient deposition [Tr. 68] to satisfy the requirements of Penal Code 811 and 812. Nevertheless, just four years before *Staples, Ex Parte Dimmig* (1887) 74 Cal. 164, had granted habeas corpus to

a petitioner held on an unverified complaint phrased in the language of the statute. The *Dimmig* Court said:

> The liberty of a citizen cannot be violated upon the mere expression of an opinion under oath that he is guilty of crime. 74 Cal. 166.

Apparently these two cases remained representative of the law until the Amendment of 1951. A verified complaint was valid and would support issuance of a warrant, whereas an unverified complaint would not. All of these cases, of course, refer to complaints which are phrased in the conclusionary language of the statute concerned. During this period of time and until 1961, it was believed that the Fourth Amendment to the United States Constitution did not apply to the States and they were therefore free to apply their own rules as to searches and seizures, subject only to limitation to action which was consistent with "The Concept of Ordered Liberty." *Wolf* v. *Colorado,* 338 U.S. 25 (1949).

Since, at that time it was permissible to found a conviction in California on evidence which had been obtained through an unlawful search (prior to *People* v. *Cahan* (1955) 44 Cal. 2d 434), there appeared to be no reason why the initial arrest should not be permissible by means of a summary, simplified procedure. This was precisely what the [Tr. 69] Legislature did in the Amendments of 1951. Those Amendments provided, first, that a complaint verified on information and belief was sufficient. Penal Code 806. Sections 811 and 812 were simply repealed in their entirety because, obviously, if a complaint phrased in the conclusionary language of the statute and verified on information and belief was sufficient to justify, in fact require, issuance of a warrant of arrest, there was nothing left for the magistrate to pass on in issuing a warrant. In fact, the Amendment of 1951 reduced the magistrate's function in issuing warants of arrest strictly to that of a ministerial officer who simply ascertained that there was a complaint on file and was then bound to issue a warrant. Notably, the statutes relating to search warrants, Penal Code 1523-42, which have remained substantially unchanged from their 1872 form, are nearly identical with the 1872 arrest warrant statutes.

The first bright light which came to shine through this judicial and legislative dark age was *People* v. *Cahan,* supra, holding as a landmark that evidence which had been obtained in the course of an unlawful search or seizure would be inadmissible in proof of guilt. Nevertheless, *Cahan* was written with some reservations, the Court indicating that it did not feel itself bound by the previous Federal decisions under *Weeks* v. *United States,* 232 U.S. 383 (1915), but would be free to develop workable rules regarding searches and seizures. *Cahan* was then followed by the decision of the [Tr. 70] United States Supreme Court in *Mapp* v. *Ohio,* 367 U.S. 643 (1961) which held the Fourth Amendment to the United States Constitution squarely applicable to the States.

Shortly after the decision in *Mapp,* the Court handed down its opinion in *Ker* v. *California,* 374 U.S. 23 (1963) which, in effect, holds that although the States may develop their own rules of procedure, the decisions of the United States Supreme Court in applying the Fourth Amendment will provide the "Fundamental Criteria" as to reasonableness of a search. 374 U.S. 33. Presumably, this would seem to mean that cases which have been and are in the future decided under the Fourth Amendment, as opposed to the Court's supervisory power over the Federal Courts, will provide authority as to the minimum standards applicable to the States.

The Supreme Court has held squarely, under the Fourth Amendment, that the requirements for warrants of arrest are the same as those for a search warrant. *Giordenello* v. *United States,* 357 U.S. 480, 485. In fact, it would appear that *Giordenello* is controlling in the case at bar. In that case, a Federal narcotics agent obtained an arrest warrant from a Federal Commissioner based on a complaint sworn to by the agent which simply stated the conclusionary language of the statute. Armed with the warrant the agent followed the defendant until he saw him with a brown paper bag in his hands which the officer suspected to contain narcotics. He then made the arrest, indeed found narcotics in the bag, [Tr. 71] and seized them as evidence. On certiorari, the petitioner raised two contentions, 1) that the warrant was invalid because based altogether on hearsay, and 2) the warrant was invalid because the complaint did no more than recite the elements of the crime charged.

The Court found it unnecessary to rule on the first contention because the second was adequate to dispose of the case. The Court says:

> The protection afforded by these rules (FRCP 3 & 4), when they are viewed against their Constitutional background, is that the inferences from the facts which lead us to the complaint ". . . be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime." 357 U.S. 486.

Although the opinion in *Giordenello* is somewhat ambiguous as to whether it is a case interpreting the Fourth Amendment or merely a "supervisory powers" case, that ambiguity is dispelled in *Aguilar* v. *Texas,* 378 U.S. 108 (1964) once and for all. In *Aguilar* the Court strikes down a State search warrant based on an affidavit very similar in content to the complaint which was struck down in *Giordenello.* In doing so, the Court affirms that the requirements for search warrants and arrest warrants are the same and further affirms that "the principles announced in *Giordenello* derived, therefore, from the Fourth Amendment, and not from our supervisory powers." Fn. 3, 378 U.S. 112.

[Tr. 72] Finally, to complete the framework, the Court held in *Fahy* v. *Connecticut,* 375 U.S. 85 (1963) that the question presented, where illegally seized evidence is admitted, is "whether there is any *reasonable possibility* that the evidence complained of *might have contributed* to the conviction." (Emphasis added.) 375 U.S. 86.

Applying these authorities to the case at bar, it is immediately apparent that the statutorily sanctioned procedure for issuance of the arrest warrants in question falls squarely within the Constitutional prohibition of *Giordenello.* In fact, this case is much stronger than *Giordenello* since here there were two arrests and two arrest-based searches of the same premises within two days, all of which raises a strong inference that the warrants and the searches were, from beginning to end, nothing more than pretexts to conduct an exploratory search under a general warrant. See *Ker* v. *California, supra.* For these reasons, neither the property seized nor statements made at the time of the

seizure nor the fruits of either search are admissible in evidence against the defendant. *People* v. *Cahan,* supra; *Wong Sun* v. *United States,* 371 U.S. 471 (1963); *Silverthorne Lumber Co.* v. *U.S.,* 251 U.S. 385 (1920).

In the case at bar, much of the tainted evidence has already been admitted. The only thing which remains to be done is to actually put into evidence the tangible items which were seized from the defendant's home. Therefore, it [Tr. 73] is respectfully suggested that neither admonition nor striking from the record nor any other device available to the Court could possibly erase from the Jury's minds the effect of the evidence which has already come in. It would then seem to follow that the defendant has been irreparably damaged in the presentation of his case and could not possibly now receive a fair trial before this jury.

Wherefore, the defendant prays, based upon the foregoing argument and authorities, that the Court declare a mistrial.

Keith C. Monroe, Attorney for Defendant.

* * * * *

[Tr. 74] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF ORANGE

No. C-16098

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

TED STEVEN CHIMEL, Defendant.

NOTICE OF INTENTION TO MOVE FOR NEW TRIAL—Filed July 25, 1966

* * * * *

[Tr. 81] As to the evidence which was seized in the course of the two arrests and the two searches of defendant's home, counsel invites the court's attention to the points and authorities heretofore filed in support of counsel's motion for mistrial on that ground. There are several factual points which arose after the filing of that motion which deserve consider- [Tr. 82] ation. First, the most glaring evidence of abuse of the judicial process in this case came from the investigating officer, Thomas Del Coma. Officer Del Coma conceded that a few days before the first arrest under warrant, he had, with the help of a Santa Ana officer, "detained" the defendant on the street, had transported him to the Orange Police Station, had interrogated him there and had finally released him. The defendant testified that this "detention" was at the point of a pistol, officer Del Coma "could not remember" whether anyone had drawn a pistol, but concluded that the defendant had *voluntarily* stopped his car, left it on the street, gone to the police station, undergone interrogation and finally had been released. It is a sad reflection on our law enforcement agencies when a "detaining" officer can remember that a "detention" was clearly voluntary, but cannot remember whether or not it was done at the point of a drawn pistol. Counsel suggests that there is no doubt that the defendant was, on that occasion, placed under arrest. Penal Code 835. The next step of this fascinating saga occurred on September 13, 1965. Officer Del Coma, having previously been refused issuance of a complaint on several occasions, finally had a complaint and warrant of

arrest issued shortly before 11 a.m. on that date. The officer testified that even though the warrant was delivered into his hands at that hour and that he understood the direction of the warrant that he was to "forthwith" arrest the defendant and that he knew where to [Tr. 83] find the defendant on that day and at that hour, he did not execute the warrant until late in the afternoon of the same day. In fact, Officer Del Coma concededly went to the defendant's home and awaited him there, even though he knew where to execute the warrant without having to wait at all. When the defendant arrived, the house was searched from top to bottom, including the garage.

Not satisfied with this, Officer Del Coma took part in a further search of the defendant's same residence in the same manner on September 16, 1965. Again, no search warrant, wait for the defendant to arrive, then search the house from top to bottom, including the garage.

Counsel earnestly urges that, disregarding the legality of the arrest warrants, a point which is not conceded by any means, this case involves perhaps the most transparently clear facts to come to his attention in which not one, but two, arrests were used solely as a pretext for a search of a private residence. The United States Supreme Court has squarely held, applicable to the States, over and over that an arrest may not be used as a pretext for a search. *Ker* v. *California,* 374 U.S. 23 (1963). Of course, it has long been the federal rule, now applicable to the states, that where it appears the search and not the arrest was the real object of the arresting officers, and that the arrest was a pretext for or at most an incident of the search, the search is unreasonable within the meaning of the Constitution. [Tr. 84] *United States* v. *Lefkowitz* 285 U.S. 452 (1947). Beyond the foregoing, defendant's arguments as to unlawful search and seizure are set forth in the memorandum heretofore filed in support of motion for mistrial. However, it seems appropriate to recall that the standard of error here is apparently governed by *Fahy* v. *Connecticut,* 375 U. S. 85 (1963), holding with respect to the states that where there is a reasonable possibility that unlawfully seized evidence *might* have contributed to a conviction, the case will be reversed.

* * * * *

[Tr. 91] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE

Dept. 5 Extra Session Sitting in Dept. 3

Court convened at 1:30 p.m. July 29, 1966, present Hon. DAVID D. FRENCH, Assigned, Judge; E. Parry Hagen, Deputy Clerk; William Phillips, Deputy Sheriff; Wallace Peacock, Reporter; and the following proceedings were had:

C-16098

PEOPLE,

vs.

CHIMEL, TED STEVEN

Hearing Re: Probation and Pronouncement of Judgment as to Counts I, & III of the Information.

Defendant in court with counsel Keith Monroe. People represented by James Enright, Deputy District Attorney. Motion by the defendant for a new trial. Arguments by counsel on the motion. Motion denied. Court advised by defendant he had read and considered the Probation Report. No legal cause appearing why judgment should not now be pronounced, and the defendant having been found guilty to the crime of a Felony, to wit: Two counts of Section 459 of the Penal Code. Probation is denied. It is the Judgment of the Court that the Defendant be sentenced to the State Prison for the term prescribed by law. Sentence and counts ordered to run concurrently with any other sentence. Defendant remanded to the custody of the Sheriff. The Sheriff is ordered to deliver the Defendant to the Custody of the Director of Corrections at the California Institution for Men at Chino, California. Bail is exonerated. Motion for and by [Tr. 91a] the defendant for bail pending a hearing on notice of appeal. Motion denied. Notice of Appeal filed with the court.

Entered 8-3-66. Book 306 Page 34.

[Tr. 92] DEPARTMENT 5 EXTRA SESSION IN DEPT. NO. 3 CASE No. C-16098

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE

ABSTRACT OF JUDGMENT—Filed July 29, 1966

The People of the State of California,

vs.

TED STEVEN CHIMEL, Defendant.

Hon. DAVID D. FRENCH, Assigned (Judge of Superior Court) James Enright Dep. D. A. (District Attorney) Keith Monroe (Counsel for Defendant)

This certifies that on the 13th day of July, 1966 judgment of conviction of the above-named defendant was entered as follows:

In case No. C-16098 Count No. I he was convicted by Jury; on his plea of Not Guilty of the crime of Burglary (1st Degree) in violation of Section 459 of the Penal Code with prior convictions charged and proved or admitted as follows: No findings.

Defendant was not charged and admitted being, or was found to have been armed with a deadly weapon at the time of commission of the offense, or a concealed deadly weapon at the time of his arrest within the meaning of Penal Code Sections 969c and 3024.

This certifies that on the 13th day of July, 1966 judgment of conviction of the above-named defendant was entered as [Tr. 93] follows:

In Case No. C-16098 Count No. III he was convicted by Jury: on his plea of Not Guilty of the crime of Burglary (2nd Degree) in violation of Section 459 of the Penal Code with prior convictions charged and proved or admitted as follows:

No findings.

Defendant was not adjudged a habitual criminal within the meaning of Sub-division (a) of Section 644 of the Penal

Code; and the defendant is not a habitual criminal in accordance with Sub-division (c) of that Section.

It is therefore ordered, adjudged and decreed that the said defendant be punished by imprisonment in the State Prison of the State of California for the term provided by law, and that he be remanded to the Sheriff of the County of Orange and by him delivered to the Director of Corrections of the State of California at the place hereinafter designated. It is ordered that sentences shall be served in respect to one another as follows Concurrent and in respect to any prior incompleted sentence(s) as follows: Concurrent.

To the Sheriff of the County of Orange and to the Director of Corrections:

Pursuant to the aforesaid judgment, this is to command you, the said Sheriff, to deliver the above-named defendant into the custody of the Director of Corrections at the California Institution for Men at Chino, Calif. at your earliest convenience.

[Tr. 95] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE

No. C-16098

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

TED STEVEN CHIMEL, Defendant.

NOTICE OF APPEAL—Filed July 29, 1966

To KENNETH WILLIAMS, District Attorney, and to the Clerk of the above-entitled court:

You will please take notice that the Defendant Ted Steven Chimel hereby appeals to the District Court of Appeals in and for the Fourth Appellate District, State of California, from the Judgment pronounced and entered in this Court on July 29, 1966, finding said Defendant guilty of two counts of Burglary.

Said Defendant hereby requests that in addition to the normal record to be prepared in accordance with rule 33A of the California Rules of Court, an additional record be made as follows:

1) All motions made during trial by defendant;
2) Oral procedings on motion under Penal Code 995 by defendant prior to trial;
3) Opening statements;
4) Arguments to the jury.

Said Defendant submits that it is necessary and proper [Tr. 96] to include said additional record for the following reasons:

1) Defendant contends that unlawfully seized evidence was admitted upon trial and written motions were filed which are relevant to this appeal;

2) Defendant contends that the court had no jurisdiction to proceed under Count II of the information and the proceedings under his motion under Penal Code 995 are necessary to determination of this contention;

3.) The opening statements and arguments to the jury are necessary to show bad faith of the prosecution in proceeding under Count II of the information.

Dated: July 29, 1966.

Keith C. Monroe, Attorney for Defendant.

/Granted as to

(1)—(All motions made during trial by Defendant) only, August 1, 1966.

David D. French.

* * * * *

[Tr. 1] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, DEPARTMENT THREE

No. C-16098

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

TED STEVEN CHIMEL, Defendant.

Honorable DAVID D. FRENCH, Judge Presiding

REPORTER'S TRANSCRIPT

July 5, 6, 7, 8, 11, 12, 13, 1966.

APPEARANCES:

For the Plaintiff: James G. Enright, Assistant District Attorney.

For the Defendant: Keith C. Monroe, Attorney at Law.

William R. Macauley, C.S.R., Official Court Reporter, Courthouse, Santa Ana, California.

* * * * *

[Tr. 21] Santa Ana, California—Wednesday, July 6, 1966.

* * * * *

[Tr. 22] (Prosecution opening statement.)

The Court: Mr. Monroe?

Mr. Monroe: Your Honor, I'd like to reserve opening statement to the close of the Prosecution's evidence.

The Court: All right. Call your first witness, Mr. Enright.

Mr. Enright: People will call Mrs. Pulati.

EVALENE PULATI, produced as a witness on behalf of the People, and being first duly sworn, was examined and testified as follows:

The Court: Mrs. Pulati, if you will pull your chair up close to the desk there and talk into that microphone like you would the telephone at home——

The Witness: All right.

The Court: —we can hear you—we can all hear you very nicely.

The Witness: Okay.

Direct examination.

By Mr. Enright:

Q. Mrs. Pulati, I believe you gave us your full name.

Directing your attention to around September of 1964, were you living in the City of Santa Ana?

A. Yes.

Q. And where was that at?

A. We had just purchased a home that we lived in at the time of the burglary. We bought that home in September—pardon me—September, 1964.

[Tr. 23] Q. And that is on Flower Street in Santa Ana?

A. Yes, sir.

Q. Directing your attention to around September of 1964, did you have occasion to meet the Defendant, Mr. Chimel, Ted Chimel?

A. Mr. Chimel belonged to three coin clubs that we belonged to. I wouldn't say we knew him real well at that time,

but we did know who he was, and we would talk with him at the coin clubs, but he didn't start coming to our home as a regular visitor until possibly in November of 1964.

Q. What were the names of the coin clubs that you belonged to, and also that Mr. Chimel belonged to?

A. The Santa Ana Coin Club, the Garden Grove Coin Club and the Orange Coast Coin Club that meets at Newport Beach.

Q. And what would take place in these coin clubs?

A. Well, just a normal meeting, they have a business meeting, and then they have a little social refreshment session, and then they would have auction where the members could buy and sell the coins amongst themselves.

Q. And when people would discuss the latest trends?

A. Yes, the prices and what was real hot at the moment, and what might be real scarce, or what might be highly speculative that you maybe should buy, if you were a speculator.

Many people go to coin clubs that they are either col- [Tr. 24] lectors or speculators or investors, and they all go for different reasons.

Q. You say around November of 1964 that Mr. Chimel started to come over to your house on a regular basis?

A. Yes. He lived very near us at the time, and he'd stop on his way home from work or on his way out of the house after dinner, and we would always discuss coins. In fact, we bought a few coins from him on occasion. We sold him a few coins on occasion.

Q. And did you or your husband bring your coins out to show him?

A. We brought out a box of a hundred rolls of nickels one night to show him, because he wanted to buy some '43-D nickels from us; but at the time that Mr. Chimel was coming to our home we were re-inventorying and repackaging all of our collection of coins, and the reason we were doing this, Mr. Pulati and I hadn't been married very long. He was a collector and so was I, and we had both had separate inventories and separate insurance policies, and every time we wanted to know many nickels or how many of this we had, we'd have to get into two sets of books or two different boxes of coins.

And so we decided we'd combine all of our coins, and

so in combining all of our coins it meant making completely new records, and we were doing this each evening when Mr. Chimel would come. He would watch us. He knew exactly what [Tr. 25] we were doing. He would see these books of coins, and we would discuss this. In other words, he would see us working on an album of coins or medals or something like that. Our conversation was just about coins, every time he'd come over.

Q. And are there in addition to coins such as nickels and dimes and quarters and such, are there items that are commemorative items, medals, or honorary coins?

A. Well, we were very diversified in what we'd collect. Some people might just collect dollars; they might just collect pennies. We had hoped some day to have a collectors' shop, and for many years we had been investing large sums of money in coins.

By "large sums" I mean thousands of dollars, and we had a lot of everything. We had boxes of nickels and we had boxes of dimes and pennies and dollars, and we had medals and tokens. We had paper money, currency, foreign coins, everything, numismatic.

Q. For many years, you mean separately?

A. Yes. Vito was a collector for, oh, maybe ten, 15 years, and he had a very large collection of coins. I started buying coins in 1958, and I would buy six or seven or $800 worth a month.

Q. You mentioned insurance. Did Mr. Chimel ever inquire about insurance?

A. Yes. In fact, the first time he ever saw me working on a book full of crowns, or something, he asked me, he [Tr. 26] says, "You have all these coins around the house. You must have insurance." I said, "Well, of course we have insurance."

Q. Now, directing your attention to the night of the burglary, February second, 1965, what time did you and your husband leave that night, leave the house, if you did leave the house?

A. Well, we always left about the same time, usually around a quarter to seven, but this particular night we didn't leave until ten to seven, and the reason I know so well was our neighbors were just coming in, and I was surprised to see them home, and I thought we must be late

because they always came later, so I went back to check the clock and it was ten to seven.

A. And where did you go?

A. We went to the Orange Coast Coin Club, which meets in Newport Beach at Bayside Village on, I don't know if it's North or South, West, Coast Highway, but it is at Bayside Village in Newport Beach.

Q. Does Mr. Chimel belong to that club?

A. Yes, he did.

Q. Did you see him there that evening?

A. No. And that was the first evening he had missed, he had ever missed since we had known him.

Q. Now, what time did you arrive home?

A. We arrived home a little earlier than usual. I would say around 10:30.

[Tr. 27] Q. How did you enter the house?

A. Well, we always went in and out of our house on the side door. We have three doors: we have a front door, a back door, and we have French doors in the dining room, and we always go out the side door, because you can't park in the front of our house. It is a no-parking zone, so we always park on the side and go in and out that way.

So we went out this side door and that's the same way we came in. We have a little dog; she was with us, and my husband walked the dog up and down the street.

I entered the house first. I had to go to the bathroom, and I went in very hurriedly. There was something rather strange about the house. I went in rather hurriedly, but it had an eerie feeling, and I went to this room—the lights were on, and I went to this room where we keep our coins, but I couldn't see the closet. I could see a trunk—I shouldn't say a trunk, but I could see a foot locker that we kept there, which was full of coins, which was not stolen.

I could see that, and I could see it was all right, so I went on in the bathroom, and I just had a feeling somebody was in the house. I was almost afraid to go to the bathroom, but I did go in, and I left the door open, and my husband came in, and we hang our little dog's leash right by our back door.

And we had always left the lights on, the flood lights in the breezeway there by the door, but they were off, and [Tr. 28] my husband noticed this when he hung up the leash, and he said to me; called to me in the bathroom and said,

"Did you lock the door?" And I said, "Yes." And he could see that the lights were off, and he tried to turn them on. They wouldn't turn on.

And he touched the door, and it was just kind of swinging in the breeze, because they had taken this little thing at the top of the door that makes it pull shut, they had taken this off, and the door was swinging, because the latches had been cut away, the door had been—they had gotten in by cutting out around where the lock, where the door locks in, and it was just swinging in the breeze. And he hit it, and he says, "My God, we have been knocked over."

And I am coming out of the bathroom, and I said, "Don't touch anything. I will call the police." And that's what we did. We called the police.

Q. Which door are you speaking of?

A. This was the back door.

Q. You mentioned the dog. Was the dog with you at the coin show?

A. Yes, we had the dog with us, and we knew that it hadn't been a stranger in the house because our dog is very sensitive. She is a poodle, very intelligent dog, and any time anyone comes around she sniffs and smells and we know if somebody's been around. It was just like nothing had happened. She didn't pick up a scent or anything.

[Tr. 29] Mr. Monroe: I object, Your Honor, and ask this testimony be stricken as being a conclusion of the dog. (sic)

The Court: All right, it may go out.

By Mr. Enright:

Q. Now, you called the police?

A. Immediately.

Q. Did you subsequently notice any coins missing?

A. Well, we looked—we checked several things in the house very hurriedly because we had money on the coffee table in the living room, we had medals, silver medals, sterling silver medals worth about $15. They had just arrived in the mail that day.

And I went in the living room, the lights had been left on in there, and the medals were lying on the coffee table, and I checked my sterling silver in the dining room, and it was all intact. No evidence of any ransacking of the house at all.

There were coins in the living room, there were coins in the dining room, but they had not been touched.

Q. Coins were not touched in the dining room or the living room?

A. Right.

Q. Your sterling silver was not touched?

A. Yes. And my watch I have on today was lying on my dresser in our bedroom, and I went in there and it was still laying there.

Q. Now, in relationship to the den or the bedroom that [Tr. 30] was converted into a den, did you notice anything missing in there?

A. Well, these two drawers where we kept our coins were gone, but the trunk that had the main part of our coin was not gone; it was still there.

Q. The drawers themselves were gone; is that right?

A. Yes. There were two large drawers.

Q. And is this the room that your husband had taken the coins out to show Mr. Chimel?

A. This is the room where he had gone in to get the coins, yes.

Mr. Enright: Excuse me, Your Honor.

The Court: Do the members of the Jury have paper and pencils? Would you like to have something so you could take a few notes?

Members of the Jury: (Multiple response.) Yes.

The Court: Do we have anything we can give the Jury?

By Mr. Enright:

Q. Mrs. Pulati, do you have a photograph of the——

A. Yes, I do.

Q. —of your den area where the drawers were?

A. Yes, I do.

Mr. Enright: May I have that?

Your Honor, may this be marked for identification purposes?

The Court: All right. The picture will be marked [Tr. 31] People's For Identification Number One.

May I have an exhibit sheet, Mr. Hagen?

By Mr. Enright:

Q. I show you People's Identification Number One, and ask you if you can identify it?

A. Yes.

Q. Is that a fair and accurate picture of the—is that a cabinet or a closet——

A. This is an old Spanish house that we live in, and they had built-in chests of drawers in the closets, and this is a picture that was taken with our camera the next morning after the burglary, of the closet, the chest of drawers, minus the two drawers that had been taken.

Q. And the two drawers were taken out completely?

A. Yes, sir.

Q. And you have not seen them since?

A. No, sir.

Mr. Enright: Your Honor, may this be introduced as People's Number One into evidence?

Mr. Monroe: No objection, Your Honor.

The Court: It will be received in evidence. People's One.

Members of the Jury, this isn't required, but I would suggest that during intermission you leave your pad of notes in your chair. Everybody in the Jury have a pencil or a pen of some kind to write with? Anybody needs something to write with? All right. You may or may not, Members of the [Tr. 32] Jury, take notes as you prefer.

Mr. Enright: Your Honor, at this time I have no questions now, but we will wish to recall Mrs. Pulati for later testimony.

The Court: Any questions now, Mr. Monroe?

Mr. Monroe: Yes, Your Honor, I would like to inquire on the matters that have been covered.

Cross-examination.

By Mr. Monroe:

Q. Mrs. Pulati, you and your husband belong to the Orange Coast Coin Club?

A. Yes.

Q. Where does this club meet, or where did it at that time? Forgive me.

A. At Bayside Village in Newport Beach.

Q. I see. And at that time did the club meet regularly? Did it meet once a week, once a month, how often?

A. Once a month.

Q. Once a month. When was the first time that you saw Mr. Chimel at a meeting of this coin club?

A. It was the first meeting that we attended there, which was probably around July, possibly August of 1964.

Q. But at that time you didn't know Mr. Chimel?

A. Oh, we knew just who he was, yes.

Q. This club met once a month. Was there any particular day of the month it met?

A. All the clubs always meet on the same day. For [Tr. 33] instance, the first Tuesday or the first Monday, or something like that. They have a regular meeting night.

Q. What was the night the Orange Coast Coin Club met?

A. First Tuesday of every month.

Q. And as nearly as you can recall, you first saw him at that club in July of 1964?

A. Well, it could not have been before that, because I didn't live in Santa Ana before that, and never had attended a meeting before, so it had to be July or August.

Q. Then I take it from your answer that it could have been after that time?

A. Yes, it could have been.

Q. Could it have been September?

A. Possibly, but no later than September.

Q. No later than September. Therefore, of your own knowledge you would have seen him at something like four meetings of that coin club, four monthly meetings before?

A. That particular club, yes.

Q. And you don't have any way of knowing how often or how regularly he came to that club's meetings before that time?

A. No, I don't.

Q. When did you first report to the police the fact that you believed someone had broken into your house?

A. Oh, within five minutes after we came home.

Q. So this would be probably some time shortly before [Tr. 34] eleven o'clock on February second, the evening of February second?

A. I believe the officer arrived at our home around a quarter to eleven that night.

Q. This was a Santa Ana police officer?

A. Two Santa Ana police officers.

Q. What did they do when they got to your home?

A. They took fingerprints of our back door and of this closet that you just had the picture of, and discussed with us—well, it was very obvious that someone we knew had done this, because our house was not torn apart.

Q. This is not responsive to my question, Mrs. Pulati. What did they do?

A. Well, they questioned us about who we knew that could have possibly have done this.

Q. Did they ask you what, if anything, was missing?

A. Oh, yes, they did.

Q. And did you tell them what was missing?

A. Well, as best we could remember. There were a lot of loose coins in there, and we gave them a report as best we could, yes; we gave them a list.

Q. And what items did you report to them as being missing?

A. Well, that's been a long time ago and I haven't given it any thought since then, but I will try to recall.

We told them there were silver dollars and boxes of [Tr. 35] nickels and boxes of pennies and rolls of pennies, and boxes of dimes and pennies, and so forth. We gave them an estimated value of this. As I recall, I think it was somewhere between—cash value of between five and $800.

Q. Well now, this is getting beyond the question again.

A. Oh, I'm sorry.

Q. Well, would I be correct then that you told them that there were nickels, pennies, dimes and other coins missing?

A. Yes, yes, we told them.

Q. Did you tell them that there were any medals or tokens missing?

A. I can't specifically recall whether I did or not. We took a list of our missing coins to the police station, though, later, and——

Q. Now, wait a minute. Forgive me, if I interrupt.

A. All right.

Q. Because I want to stay on one subject, if we may, and I realize it's tempting to say more, but Mr. Enright will

bring out anything that's necessary.

Now, at this time, on the evening of February second, did you have an inventory of your coins?

A. Oh, yes, we had an inventory.

Q. A written inventory?

A. We didn't bring it out to show the officer.

[Tr. 36] Q. Well now, you did have an inventory?

A. Yes.

Q. And is that inventory in your possession or under your control now?

A. I don't have it here with me.

Q. Where is it?

A. I have an inventory of the coins that were stolen with me.

Q. Well now, I am talking about an inventory that existed on that evening.

A. Well, let me explain.

Q. A written list.

A. Let me explain to you: My husband had an inventory book, this is maybe two or 300 pages, a book, and every coin he owned was inventoried in, and I had a book, possibly five or 600 pages, that every coin I owned was inventoried in, and then we were in the process of making a new inventory book, and everything that had been repackaged and put together was inventoried in a new book, so there were really three sets of books.

Q. Now, correct me if I am mistaken. If you took Mr. Pulati's inventory book and your inventory book and simply put them together, then you would have a complete inventory of what you had on that occasion, right?

A. Oh, yes, yes, sir.

Q. Now, where are those inventory books?

[Tr. 37] A. Those are in our home.

Q. You haven't brought them here?

A. No.

Q. And in making your report to the policemen on that occasion, February second, did you refer to your inventory books?

A. No, that wasn't necessary because we knew what was in this drawer pretty much.

Q. I see. You were certain from your own knowledge of just what was in this drawer?

A. Oh, yes.

Q. I see. Did you report to the police everything which was missing?

A. Well, we told them that we weren't a hundred percent sure of every coin that was in there, because a lot of these coins were just loose in there, and it would take a lot of bookwork to give him a detailed list of every item. We had a general idea of what was in there.

Q. As far as you know—let me withdraw that.

The den is the room from which the coins were taken; is that correct?

A. Yes.

Q. And the den is in the rear of the house—that would be the east side of the house?

A. I don't have any sense of direction down here. It was the rear of the home.

[Tr. 38] Q. It is the rear of the home, and the front of the home faces west on Flower Street; isn't that correct?

A. Faces west, yes.

Q. And the coins which you missed were actually missing from the den, which is in the rear?

A. Yes.

Q. To the east?

A. Yes.

Q. Mr. Chimel had never been in this room to your knowledge?

A. Not in that particular room, no.

Q. And the major part of your collection was in a trunk or foot locker, which was undisturbed?

A. Everything that we had inventoried and repackaged and put away——

Q. Well can you just answer that question?

A. Yes.

Q. I may have misunderstood your earlier testimony. Did I understand you to say that you started in 1958 and bought six or seven or $800 a month in coins?

A. Well, at that time I did, yes.

Q. You mean that you were buying this amount every month and—let me approach it this way:

Was this a net figure—you mean that you were actually investing six to seven to $800 a month in coins?

A. Yes, sir.

[Tr. 39] Q. This would be somewhere from $7500 to $10,000 a year in coins?

A. Yes, sir.

Q. And all of these coins were kept in your home?

A. Well now, you are going back before I lived in Santa Ana, and I had never kept a coin in my home before I came to Santa Ana. They were not kept in the house then.

Q. Well, we will come back——

A. They were only in the house because we were inventorying them.

Q. We will come back to that.

A. All right.

Q. Starting in 1958 you were buying six or seven or $800 a month in coins, and how long did you continue buying coins at that general rate?

A. Well, I didn't do this every month now. I don't want you to misunderstand me. You want a particular coin, but you can't always find it, and when you do find it you buy it.

Q. Excuse me. What I am concerned with, Mrs. Pulati, is the amount. You have testified that you were investing six to seven to $800 a month commencing in 1958.

Now, do you mean that once in a while, once an occasional month you would invest that much money, or do you mean $800 a month each month?

A. Well, I wouldn't say it was every month, but there [Tr. 40] were many months when it would run that high.

Q. And referring now to 1958, would——

A. The first purchase I ever made in 1958 was——

Q. Let me finish my question.

A. All right.

Q. Referring to 1958——

Mr. Enright: Your Honor, I don't see the relevancy of 1958 to a burglary in 1965.

The Court: Well, I assume it's background. Overruled.

By Mr. Monroe:

Q. Referring now to 1958, can you give me a reasonable estimate of the amount you invested in coins in that year?

A. Well, let's do it this way:——

Q. No. Please answer my question.

A. Yes. If I had my records here, I could. Without my

records I couldn't because I made too many purchases since then, and I can't remember all of them.

Q. All right. Can you give me an estimate of the total value of your collection of coins—and I am referring to your collection as distinguished from Mr. Pulati's—give me an estimate of the total value of your collection of coins on February second, 1965?

A. Oh, I'd say probably $15,000.

Q. And this was the collection which had been accumulated by you over a period of seven years?

A. Yes.

[Tr. 41] Q. Now, in reporting the loss of these coins to the Santa Ana Police Department, did you tell the investigating officer what you valued the coins at?

A. We told the officer approximately what the cash value of the coins were. Numismatic value, we had no idea what it would be. We just told them it would be much greater than the cash value. And, as I remember, we estimated the cash value to be somewhere between five and $800.

Q. And at that time did you tell the officer that—well, let's go into this value thing a little bit so that we are all talking about the same thing here.

As I understand it, when you speak of cash value, if we are, for example, speaking of a silver dollar, that refers to face value?

A. Face value.

Q. If it is a silver dollar, it's worth a dollar no matter how rare?

A. That's right.

Q. And then the numismatic value, if I understand you, is the value which this same particular dollar might have in reselling to another collector or dealer?

A. Yeah. When I say cash value, I mean face value.

Q. I see. And in reporting this loss you gave the officer the face value as the cash value?

A. The face value.

Q. And did you tell him that these were the face [Tr. 42] values or the cash value?

A. Well, that's what he asked us, what the face value was. That's all he was interested in, was the face value of it.

Q. Did you tell him that some of these coins may have been worth a good deal more than that?

A. Oh, I'm sure we did.

Q. Well, do you recall now that you did, or are you assuming that you did?

A. Oh, I'm sure I would have told him that. I don't recall specifically that I did, but I'm sure I did.

Q. These coins which were taken were insured?

A. Yes, they were.

Q. And with whom were they insured?

A. Liberty Mutual Insurance Company.

Q. And since that time have you made claim against Liberty Mutual?

A. About two weeks after the burglary we submitted a claim to Liberty Mutual.

Q. In what total amount?

A. I have the figures here somewhere. If my memory was correct, it was $2,541.62.

Q. Has that claim been paid?

A. Yes, sir, right on the penny, and it was paid on May the 30th.

Q. You have answered the question.

[Tr. 43] You testified that at some point shortly after your entry into the home on February second Mr. Pulati said, "My God, we have been knocked over." Were those his exact words, Mrs. Pulati?

A. I think so.

Q. To your knowledge, had either you or Mr. Pulati ever been the victim of a burglary or a theft before this time?

A. Well, many years ago I had had a few things stolen out of a car, or something, but never this type of a thing, where they break into your home.

Q. Am I correct in assuming that your dog was not home in your absence?

A. Yes, you are correct.

Q. I see. The dog was with you and——

A. Yes.

Q. —and you brought her—her or him, which? I'm not sure.

A. It's a her.

Q. You had some money on the coffee table in the living room. What was it?

A. Pocket change that might be valuable as a collector's item. There are certain dates you are always looking for,

and when you find one in your pocket change, which you can do, like a silver war-time nickel, or a hard date in a half dollar, we would just lay these down on a table.

[Tr. 44] Q. What was the face value, as nearly as you can estimate, of the coins you had on the coffee table in the living room?

A. Well, there were two sterling silver medals that had arrived in the mail that day, and they have a face value of, oh, maybe seven and a half dollars apiece, and there was maybe $2 worth of silver, just regular pocket change.

Q. Where is Exhibit One?

This photograph, Mrs. Pulati, has been introduced into evidence. This photograph, as I understand it, is taken somewhere within the den in the back of the house; is that correct?

A. Yes.

Q. Which wall of the den is this chest of drawers on?

A. Well, if you walked into the room, say you were coming into the room like this, this is the door, and you come in, and it's in the far corner over here. (Indicating.) You could not see it until you got right up into the closet.

Q. All right. Now, one of the walls of the den would also be the back wall of the house, would it not?

A. Yes, but there's a window right over this chest of drawers, and you can see this from the outside of the house. In fact, you can see it from the back door.

Q. I am trying to locate where it is now. One of the walls of the den is the back wall of the house, which would be the most easterly wall; is that right?

[Tr. 45] A. Yes.

Q. Then there would be a north and a south wall of the den; is that correct?

A. Yes.

Q. And then am I further correct in assuming that you enter the den then from the other wall?

A. Yes.

Q. The door leads in?

A. Yes.

Q. All right. Now, where is this chest of drawers?

A. It's in the closet.

Q. In relationship to the door through which you enter the den, is it on your right or on your left?

A. Well, let's suppose the top of this table here is the room. You come in right here and the closet's right over here. (Indicating.)

Q. Then it would be on your left as you entered the den?

A. Yes.

Q. And it is right near or in a closet in that corner?

A. The actual chest of drawers when you walk in the closet, the door was never shut in this closet, and when you walked to the closet you see this chest of drawers.

Q. Oh. Then this chest of drawers is actually within a clothes closet?

A. Yes, it's part of the actual closet. It's built [Tr. 46] in. The house was made that way.

Q. Now, there was a trunk or a foot locker which contained the major part of the collection. Which, incidentally, was it? a trunk or a foot locker?

A. It was a foot locker.

Q. And where was this located in relationship to this chest of drawers?

A. Well, at that time it was about here. If this was the closet, it was about here. (Indicating.)

Q. It would be to the east then?

A. Yes; it wasn't in the closet.

Q. It was actually in the room?

A. Yes.

Q. Now, what else was in the room?

A. Well, this was locked, this chest of drawers—I mean this foot locker was locked.

Q. What else was in the room?

A. There was a little chest between that and the closet where we kept all our supplies. Those supplies were all taken too.

Q. Was there a bed in the room?

A. No, sir.

Q. Was there a couch?

A. Well, let me just draw you a little picture of the room. There's a closet and there was a chest of drawers where we kept all the supplies. The supplies were taken. [Tr. 47] There was a foot locker that wasn't touched. There was a table over here that had a little cabinet full of coins. That was taken. There was little boxes of coins. Those were taken.

This was a work area where we worked, with a folding, collapsible table. There was a card table, as I remember, and then on this side of the desk was a typewriter, and what have you. That's all in the room. (Indicating.)

Q. Anyone entering the door—or anyone entering the room through the door could without any difficulty see the foot locker?

A. Oh, yes.

The Court: Anybody, counsel or Jury, feel that a recess is necessary before 12 o'clock? Unless you do, we will keep right on going. Unless somebody holds up their hand, why, we will keep on going.

By Mr. Monroe:

Q. You gave me a figure, Mrs. Pulati, which I didn't inquire about, $15,000 for the entire collection. This would be your collection alone, $15,000, as of February second, 1965?

A. Well, this is just an estimate of value, but I would say that was probably about right.

Q. Can you give me an estimate of the value of your husband's collection around that time?

A. Oh, maybe around ten.

Q. So, combined, as I understand they were, a reason-
[Tr. 48] able estimate of the combined value would be $25,000?

A. Yes, sir.

Q. And the amount which you recoyered under your policy of insurance, was this the numismatic value—am I pronouncing that correctly?

A. Well, the amount we were paid was the amount of the claim that we had submitted to the insurance company. Now, if you want to know how I arrived at that figure, it is a little complicated, but I can explain it to you.

Q. How did you arrive at it?

A. Well, first of all, we knew that we'd be paid retail value for our coins, but when you say retail it has to be fair retail. It can't be top dollar.

Q. All right. Now, let me interrupt for just a moment. Retail value is the numismatist's retail value?

A. Yes.

The Court: Spell that word, will you?

The Witness: Numismatic, n-u-m-i-s-t-i-s-t, numis—a-t-i-c.

By Mr. Monroe:

Q. Isn't it n-u-m-i-s-m-a-t-i-c?

A. Numismatic.

Q. Now, back to the coins. Now, you arrived at a retail numismatic value of the coins which you determined to be missing, and how did you arrive at this value?

A. Well, they have what's called a blue book, and they have what's called a red book. It is kind of like car [Tr. 49] dealers. You have a blue book, which is wholesale, and a red book, which is retail, and then you have a coin newspaper, which is exactly like the Wall Street Journal for the stocks, and the coin market is just almost like the stocks. Market fluctuates every day. One coin will be one price today and another price tomorrow, and our insurance company told us that we had to price the coins at market value as of the date of the burglary.

So I took the Coin World as of that week—it always comes out on Wednesday, and I took the Coin World as of February—I think it would have been the third—and used the trends for rolls and things that they priced in trends column, and the medals and the tokens and things I used our records of the cost, what I had paid for them when I had purchased them.

Q. Now, the red book, to which you refer, is that entitled A Guide Book of United States Coins?

A. That's right.

Q. And is this a generally recognized authority as to value of——

A. Yes, it is.

Q. -numismatic items?

A. Yes, sir.

Q. And Coin World, is that the newspaper published in Sidney, Ohio?

A. Yes, sir.

[Tr. 50] Q. Purporting to be the weekly newspaper of the entire numismatic field?

A. Yes; it is the equivalent of the Wall Street Journal for the stocks.

Q. Is that a generally recognized authority as to dealings in and values of numismatic items?

A. If you are not a coin dealer. If you are a coin dealer, then you use a teletype machine, and that sort of thing.

Q. Would you call this newspaper, the Coin World, a generally recognized authority?

A. To collectors, yes. There's a big difference between a collector and a dealer.

Q. Well, perhaps I am oversimplifying here in talking about numismatics then. Can you clarify for me the distinction between?

A. Well, I think a numismatist in general is anybody that has anything to do with coins, but a coin collector is someone who buys coins just for his collection. He is not a dealer, and he is not a speculator. He is just a collector.

And that newspaper is published primarily for collectors, but it also has a lot of trends and things for investors in there. The dealers advertise to sell their coins, and they stick pretty much to the trends that they quote on the trends in the column there.

Q. Are you familiar with the International Association [Tr. 51] of Professional Numismatists?

A. Well, I know some dealers who belong to it.

Q. Is this a recognized organization of numismatists of general membership?

A. I would say so, but there are several different ones that they can belong to.

Q. Would it be a fair statement to say that you tried through these various sources to arrive at the retail numismatic value of the coins which you determined to be missing for your report of the loss to Liberty Mutual?

A. I took a specific—I have those lists here in my file. I took a specific list for each particular——

Q. Well now, will you listen to my question?

Mr. Enright: He's asked the question, and he is getting the answer. He has no objection to the answer. I am not objecting to it.

The Court: Let's have a question.

Mr. Monroe: All right.

By Mr. Monroe:

Q. Would it be a fair statement to say that from the authorities you have mentioned and the sources you have mentioned that you attempted to arrive at a fair retail numismatic value of the coins which you determined to be missing?

A. Yes.

Q. Incidentally, —. Would it be fair, Mrs. Pulati, to say that the only reason you thought Mr. Chimel might have [Tr. 52] had something to do with the loss at your home was due to the fact that he was not at the Orange Coast Coin Club on February second?

A. No, that was not the main reason why we suspected him as a suspect. The main reason we thought Mr. Chimel had something to do with this is because only two people in all of Santa Ana knew that we had any coins in our home.

Q. Who was the other person?

A. The other person was the man who sold us our home. We were new here and didn't know anyone yet.

Q. How many people, as nearly as you can approximate, belonged to the Orange Coast Coin Club?

A. Well, it doesn't matter how many belong to it——

Q. Well, Mrs. Pulati, if you would please answer my question.

A. I don't really know, but I am a Member Number 131. That's all I know.

Q. And how many people generally attended meetings of that club?

A. Oh, maybe 30, from 30 to 50.

Q. How often did the Garden Grove Coin Club meet?

A. All the coin clubs in ths area meet once a month.

Q. And the Garden Grove Club did also?

A. Once a month.

Q. How many people, as nearly as you can recall, belonged to the Garden Grove Coin Club?

[Tr. 53] A. Well, they are all about the same size. I would say they all have from 30 to 50, maybe 60 members there.

Q. And this would also apply to the Santa Ana Coin Club?

A. Well, it's a little larger.

Q. And all of these people knew you were coin collectors?

A. Well, only coin collectors go to coin meetings, so they could draw this conclusion.

Mr. Monroe: I have no further questions at this time, Your Honor.

Redirect examination.

By Mr. Enright:

Q. Mrs. Pulati, did you announce at the meeting with your husband that you kept the coins in your——

A. Never; we never discussed this with anybody.

Q. Did you tell them you kept them in the den?

A. Oh, we never discussed we even had any.

Q. Mr. Chimel was the one member of these various coin clubs that was coming over to your house prior to the burglary; is that right? visiting and talking about coins?

A. He was the only member of any coin club that had ever been to our home.

Q. Did you give Mr. Chimel permission to break into your house and take any coins?

A. No, sir.

[Tr. 54] Q. Did you give anybody permission to do this?

A. No, sir.

Q. The police arrived five minutes after you—you called the police five minutes after you came home; is that your testimony?

A. Yes.

Q. And they immediately arrived in the house?

A. They were there within about 15 minutes.

Q. Did you whip out a prepared inventory list of the exact number of coins that were missing from your house?

A. No, sir.

Q. Were you a little nervous that your house had been broken into in the night-time?

A. Well, I was a little upset about it.

Q. Now, you say that you had been going through an inventory process. You had an inventory of your coins, your husband had an inventory of his coins, and you were getting it in one general inventory; is that correct?

A. We were making a new inventory, yes.

Q. And from that inventory you prepared a list for your insurance company; is that correct?

A. Yes.

Q. And do you have that list that you prepared with you now?

A. I do.

Q. Can I see it, please?

[Tr. 55] A. My husband has a special copy just for you. It's a carbon copy the insurance company gave us for you.

Q. Have you looked at this prior to my opening it up now?

A. Well, I haven't paid any attention to it recently, but I have a pretty good memory.

Mr. Enright: Your Honor, could these sheets of paper be marked as one exhibit?

The Court: All right, be marked as—For Identification as People's Two.

By Mr. Enright:

Q. I notice there are several sheets of paper. Did you make an over-all total of what was missing and break it down in various sheets of paper?

A. We gave them a master sheet, and on this master sheet was a breakdown. I tried to make it as simple for them as I could, because this involved a lot of different types of coins and different grades of coins, so I gave them just in the order that they were taken.

For instance, Drawer Number One: we itemized everything in Drawer Number One, and we itemized everything in Drawer Number Two. We itemized everything that was on top of the drawers, the boxes that were taken from the tops of the drawers. We itemized the supplies that were taken out of this little cabinet that wasn't in the closet. We itemized a little chest of drawers, coins; we did each one of these as a separate item, but all the coins that were taken had to [Tr. 56] be priced value-wise, and it was rather a lengthy list.

Q. In the den, the bedroom, the den, there were coins taken from the general work area that you described?

A. Yes.

Q. And the two drawers themselves were missing; is that correct?

A. The two drawers and all the contents were taken, and several boxes from the top of this closet were taken.

Q. And this foot locker, how large was it?

A. Well, it was a standard GI locker.

Q. And was it locked?

A. Yes, sir.

Q. The drawers in the closet were not locked; is that right?

A. No. The door to the closet was open.

Q. Now, Mr. Chimel belonged to other coin clubs; is that correct?

A. Well, he belonged to three clubs that we belonged to at that time.

Q. What clubs were those?

A. Santa Ana, Garden Grove and this Orange Coast.

Q. Is the meeting of the Orange Coast Coin Club of February second the first meeting you can remember that he was not there when you knew him?

A. It was the only meeting he ever missed at any of the clubs since we had known him.

[Tr. 57] Q. I show you People's Identification Number Two, and ask you to look at it. It contains several sheets of paper. Would you look at each of them?

A. Yes.

Q. Do you recognize it?

A. It's all in my writing.

Q. Looking at the first sheet, the one that's on the top of the exhibit, I assume you recognize your writing on that sheet?

A. Yes.

Q. How have you broken down the information on that sheet?

Mr. Monroe: I am going to object to the witness' use of these documentary materials at this time, Your Honor. There has been no foundation for use as refreshing recollection or, I don't know, perhaps counsel is going to offer this in evidence. I don't know what counsel is doing, but there's been no foundation to use these documents at this time.

The Court: She says it's in her handwriting.

Mr. Monroe: May I take the witness on Voir Dire, Your Honor?

Mr. Enright: Your Honor, I will withdraw. I thought he was interested in it from his conversation, the way he was talking. We will withdraw it at this time.

The Court: All right.

[Tr. 58] Mr. Enright: Nothing further.

Mr. Monroe: Just a couple of questions, Your Honor.

Recross examination.

By Mr. Monroe:

Q. Mrs. Pulati, you just testified that "we itemized". Do you mean that you prepared lists of coins after this lost?

A. Well, you have to submit a claim to the insurance company, and it has to be an itemized claim. You can't just say, "I lost $5,000 worth of coins," and expect them to pay you. They want an itemized list of everything you lose.

Q. I see. And did you submit to the insurance company the original inventories which we have already discussed?

A. The insurance investigator was at our home possibly 15 times.

Q. Well, can you answer my question?

A. Yes.

Q. You did submit the original inventories?

A. Oh, no. They never—the original inventories were taken from our home to be photostated by the insurance company and then returned to us.

Q. Do you know anything about an inventory of these coins as an inventory which covered these coins at and before February second which was destroyed?

A. Well, I think in the Preliminary Hearing my husband thought these records had been destroyed.

Q. Well, can you answer the question, Mrs. Pulati?

[Tr. 59] A. None of our records have been destroyed. We have them all.

Q. No records have been destroyed?

A. Yes, sir.

Mr. Monroe: That's all.

Redirect examination.

By Mr. Enright:

Q. Somebody from the insurance company came to your house and looked at these inventory records; is that right?

A. The insurance investigator came to our home and picked up all of our records and took them back to his office and microfilmed them, and then brought them back to me.

Q. And after they did this subsequently you received a check for your total amount of your claim; is that correct?

A. After they did this I submitted this claim here to them, this itemized claim to them, but before we submitted a claim they came and picked up all our records and photostated them.

Mr. Enright: Nothing further.

Mr. Monroe: No further questions.

The Court: All right. You may step down. Thank you.

Gentlemen, would you mind, I'd like to have the exhibits, keep the exhibits up here.

Now, is that——

Mr. Enright: It's been marked For Identification purposes. Unless Mr.—I don't know if they need it back, [Tr. 60] but unless Mr. Monroe has an objection, I will just return it to Mrs. Pulati. Otherwise maybe it is a copy you want to keep here.

The Witness: I left it up there.

The Court: Yes, it is on the witness' bench.

Mr. Enright: Your Honor, may I put it up there?

The Court: Yes, and the photograph there.

During the trial at any time, if either of you want it referred to, or take the exhibits, feel free to come right up the most convenient way and get them, but after you are through with them, why, please bring them back.

Call your next witness.

Mr. Enright: People call Mr. Pulati.

Vito Louis Pulati, produced as a witness on behalf of the People, and being first duly sworn, was examined and testified as follows:

The Court: If you can do as good a job using the microphone as your wife did, why, we will get along fine.

Direct examination.

By Mr. Enright:

Q. Mr. Pulati, directing your attention to February second, 1965, were you living in Santa Ana at that time?

A. Yes, sir.

Q. How long had you been living there?

A. We just had been living there approximately—excuse me—seven months.

[Tr. 61] Mr. Monroe: The witness is referring to some document. I'd like to know what it is, Your Honor.

The Witness: Well, my mind just kind of gave away a little bit, but seven months we were living there.

Mr. Enright: Do you want to see a document?

The Witness: Would you like to see the note? I just made a note. Just a notation I made.

Mr. Monroe: I just wanted to know what it is.

By Mr. Enright:

Q. You don't have a prepared statement there, or anything, do you, Mr. Pulati?

A. No, I don't have a prepared statement.

Q. Now, you are familiar with Mr. Ted Chimel?

A. Yes, sir.

Q. How long had you known him prior to February second?

A. A little over two months, I believe.

Q. And did he belong to several coin collecting clubs with you and your wife?

A. Yes.

Q. Had Mr. Chimel been over to your house prior to February second?

A. Oh, during the month of January he was a frequent visitor, yes.

Q. What would you call frequent?

A. Well, I kind of looked forward to when I got off work at night many times I'd come home and he'd be over there and we'd kibitz a little bit and maybe have a glass [Tr. 62] of wine before dinner. It was pretty often.

Q. What would the main topic of conversation be?

A. Coins, coins.

Q. Were you and your wife doing anything in connection with your individual coin collections at this time?

A. Yes; we were inventorying at the time; that's correct.

Q. Had you had an individual inventory of your own coins?

A. Yes, prior to our marriage.

Q. And did your wife have one of hers, if you know?

A. That is correct.

Q. And were you making a joint inventory?

A. This is correct, uh huh. This is our reason for having the coins in the open, so to speak.

Q. Are all your—are all these various inventory books still available?

A. They are all available. I thought at the Preliminary Hearing, if I may say this, I thought that I had destroyed the old——

Mr. Monroe: I will object, Your Honor, as not responsive to the question.

The Witness: Yes, we have all of them.

By Mr. Enright:

Q. Mr. Monroe was interested perhaps in somebody destroying any of the inventory books.

A. We have them all. I thought I had, but I didn't.

[Tr. 63] Q. You have the two inventory books and the master inventory?

A. That is correct, because we had to work with all of them with the insurance people, process of elimination, so to speak, so we could submit the proper amount of coins that were taken.

Q. And did the insurance people photostat your inventory books?

A. Yes, sir.

Q. Directing your attention to the month of January, did you have occasion to show Mr. Chimel any of your coin collection?

A. Oh, yes, on several occasions I would go to the rear of the house, the den, and bring out a box of rolls of tubes that we had, and on one occasion he was very interested in some '43-D's, so as a consequence I brought the whole box out, opened the tube and let him pick the nicest ones, and he bought two or three, I believe.

Q. And directing your attention to the evening of February second, what time did you leave the house?

A. It was ten minutes to seven. This is correct.

Q. And where were you going?

A. Newport Beach, Bayside Village on West Coast Highway, called the Orange Coast Coin Club.

Q. How long did you stay at the Orange Coast Coin Club? [Tr. 64] A. Well, I know that we got home at 10:30, because we were both kind of happy, and although the club I think let out around ten, we kind of took a drive around Main and back; we were in no big hurry to get home.

Q. Is this about the usual time the club lets out?

A. It will vary a little, 20 minutes, half hour, depending on the speaker or what have you.

Q. Was this early or usual or——

A. I think that particular night it was fairly early. The time the club folded. As I say, we didn't come right home, We took a leisurely drive down Maine and back. We did get home at 10:30. That I remember.

Q. When you arrived home at 10:30 did you notice anything unusual upon entering the house?

A. I didn't. My wife had the feeling of sort of an eerie feeling, which she made mention later, but——

Mr. Monroe: I will object, Your Honor, to the testimony about his wife's feelings, and ask it be stricken.

The Court: All right; it may go out.

The Witness: No, I had no feelings at all.

By Mr. Enright:

Q. You were just walking in the side door of the house?

A. Yeah, and then I went to the back and hung the leash, and I always check the door before I go to bed at night, again double-check it to make sure that it was locked, and upon pushing it it had gone open very easily, and kept [Tr. 65] swinging. So I was amazed and I opened the door again and looked around the corner, only to find that all the wood in the frame had been gouged out, and it was very obvious that we were robbed.

Q. The door swung freely; this is the back door?

A. Yes, because of the spring-tension deal on the back door had been disconnected, and as a consequence it didn't have a latch any more, so it just swung.

Q. Did you have occasion to check the den area to see if any items were missing?

A. Immediately after that that was my first thought. So walking in there, I looked and there were the drawers missing, looked quite empty.

Q. Showing you People's Number One For Identification —Number One in evidence, do you recognize this scene here?

A. Yes, those were the drawers in my closet that were removed.

Q. Did you ever see the drawers again?

A. Never have.

Q. Did you give anyone permission to break into your home and take the drawers?

A. No, sir.

Q. Were other coins missing?

A. Beg your pardon?

Q: Were other items missing other than the two drawers and the contents of two drawers?

[Tr. 66] A. Yes; there was a strong box which I had some personal papers in that were missing, but, of course, these were personal things, and they happened to have unfortunately been in that drawer where most of them were coins, so that taking the entire drawers and taking that in addition.

Q. Were any coins taken from any other area other than the drawers?

A. Yes. We had boxes of partial rolls of pennies. We had a box of partial rolls of tubes, we had a box of—rather nickels, and these were resting on top of these two drawers, on the top of the bureau, so to speak, and they were taken in addition to the drawers.

Q. Were any materials taken from that room?

Mr. Monroe: I will object, Your Honor, to the use of the word "taken".

The Witness: No.

Mr. Monroe: There's been no evidence that anything was taken. Is was missing.

The Court: Well, rephrase it, Mr. Enright.

By Mr. Enright:

Q. After the door was broken in, in the back of the house, was anything missing after that, other than the coins you described?

A. Well, as I say, the coins, the two drawers were taken, the coins in there, the strong box that I had some personal papers were naturally in there and taken. Outside of anything other than coins——

[Tr. 67] Mr. Monroe: I will ask that testimony be stricken as a conclusion of the witness, Your Honor.

The Court: Now, Mr. Pulati, the defense counsel is objecting to your use of the word "taken". The answer will go out.

Now, would you avoid using the word "taken" and use the word "missing"?

The Witness: Yes, Your Honor.

By Mr. Enright:

Q. Were any materials missing?

A. I am sorry. When you say "materials" now what do you have reference to, Mr. Enright?

Q. I don't know. There were coins missing?

A. Coins missing, the two drawers were missing, there were supplies missing.

Q. Supplies?

A. When I say "supplies" I mean books. We had two coin wallets, one of them was a red one, one was a black one; they were missing. Cellophane holders, polyethylene holders, Manila two by two's, which are the little holders that house the coins, all these things we had in this one particular chest were missing too.

Q. And the chests themselves were missing?

A. The two drawers were missing, this is correct. The chest that the supplies were in was still there.

Q. Now then, did you have occasion to check the living room and other areas of the house to see if any other items [Tr. 68] were missing?

A. Yes. This was the surprising thing that we did check the living room and there were, I believe, a couple silver dollars lying on the coffee table, a few coins, and my wife's diamond wristwatch was in the bedroom on the dresser, and these things were all intact. They weren't touched.

Obviously no one had gone in the living room at all.

The Court: You are going to have to keep your voice up a little there.

Mr. Monroe: I am sorry, I was unable to hear the last part.

The Court: Would you repeat that?

The Witness: Yes, certainly. There were several coins on the coffee table in the living room, silver dollars. They

were still there. And the diamond, wristwatch in the bedroom was still there. Nothing was taken. Obviously no one had gone into those two rooms.

Mr. Monroe: I object and ask that the latter part of that commencing with the word "obviously" be stricken.

The Court: All right; it may go out.

All right. I think we will take our noon recess at this time.

Now, Members of the Jury, I will remind you once again that during the intermission we are about to take it is your duty not to discuss this case amongst yourselves, or with [Tr. 69] anyone else, or permit anyone else to discuss it with you, nor will you form or express any opinion on the case until it is finally submitted to you.

We will recess until 1:45, quarter of two. Now can you attorneys both be here at that time?

Mr. Monroe: Yes.

Mr. Enright: Yes, Your Honor.

The Court: All right. We will start at quarter of two then this afternoon.

(Noon recess.)

The Court: Stipulate the members of the Jury are all present and in the box?

Mr. Monroe: So stipulated.

Mr. Enright: So stipulated, Your Honor.

The Court: Proceed.

Mr. Enright: Mr. Pulati was on the stand.

The Court: All right. Resume the stand, please.

VITO LOUIS PULATI, having previously been duly sworn, resumed the stand for further

Direct examination.

Mr. Enright: I have no further questions, Your Honor.

Cross-examination.

By Mr. Monroe:

Q. Mr. Pulati, incidentally, before I commence, if at any time anybody has any trouble hearing me, just let me

know and I will see that I talk louder. I have [Tr. 70] kind of a nasty habit of letting my voice drop, so please let me know if you have any trouble.

The Court: I will let you know right now that I have difficulty hearing you.

Mr. Monroe: Do you, Your Honor?

The Court: Yes.

Mr. Monroe: I will do something about that.

The Court: All right, fine.

By Mr. Monroe:

Q. Mr. Pulati, you testified that on several occasions you showed Mr. Chimel in your home rolls of coins, and was this in the period from your first meeting him up to February second?

A. No. Actually it was, I would say, more during the month of January, because that's when we——

Q. During the month of January primarily?

A. Yes.

Q. On these occasions did you show him individual rolls of coins?

A. Yes, sir.

Q. You testified that you brought the whole box up. What box was this?

A. The box that contained the nickels. That I remember distinctly because——

Q. All right. What box is this? Was this, first of all, one of the dresser drawers?

A. No. Actually this was one of the boxes that was on [Tr. 71] top of the dresser, and it's a box that houses plastic tubes.

Q. What kind of a box is it?

A. Cardboard. I was trying to explain it to you.

Q. Surely.

A. It's a cardboard box that I believe it carries a hundred rolls; and it houses the tubes. Dealers have them, so they are real handy when you get the tubes full of coins, because they still house the tubes, and they are full, and it's very compact, and this is the box I had relation to.

Q. This houses a hundred rolls of nickels; am I correct?

A. Yeah, I am sure that it does. At any rate, it was a full

box, and it had nickels. The tubes were full of nickels; that is correct.

Q. As nearly as you can recall, what are the dimensions of this box?

A. Well, about this wide, this square, really. (Indicating.)

Q. Indicating perhaps a foot and a half one direction?

A. Well, this, absolutely square.

Q. Well, would you estimate that distance is about a foot and a half?

A. Well, sir, I don't have my tape with me, but I'd say you are pretty close.

Q. Then approximately how deep is the box?

A. Just a little over the height of a tube, which is [Tr. 72] about that high, so it's about that high. (Indicating.)

Q. Indicating perhaps three to four inches, something in that neighborhood?

A. Yes, that's very close.

Q. And you ordinarily kept this box full of nickels on top of the dresser?

A. Well, during this period I ordinarily didn't, except for the fact that we were inventorying, and it was real convenient rather than to have them in the deposit boxes in banks, that sort of thing.

Q. Did you and Mrs. Pulati each have your entire collection at home on February second?

A. Yes.

Q. And was her estimate of the total numismatic value of approximately $25,000 reasonably accurate?

A. Yes, yes. In fact, we were conservative in our figures, but that's very, very close.

Q. The coins which you discovered missing, would you say that those coins were fairly representative in terms of value of the rest of your collection?

Perhaps I can make this more clear for you. The coins which were missing, would you say that they generally were worth more than most of the rest of your collection, or generally worth less?

A. No. If I might digress just a little, we had in our inventory we were putting away so many rolls for—in [Tr. 73] hopes that some day we would have a business, a shop, and naturally we were keeping them for that purpose, and, as a consequence, we took only the cream.

However, I'd say that what we referred to as milk, you might say, were still very nice coins, but they were not as nice as the ones that we had put away. Some of them were just as good, but most of them weren't quite as nice.

Q. When you say the coins that were put away, now, do you refer to the coins which were in the foot locker?

A. Yes. At that time, there were coins there and——

Q. What is your estimate of the face value of the coins which you discovered to be missing on February second? that is, face value?

A. Well, it's a rough guess. I would say in the area of five to $800 face. I recall distinctly that we had about—I had about 99 tubes of nickels in this one box, and then I had a half a box, what they call half tubes. In other words, there's $2 worth of tubes face value in a tube, and these were a dollar-size tubes, and I had 50 tubes of those that were missing. There was approximately $400—again, we are thinking in terms of face value—in this blue and gray cabinet that was sitting on the table, and that consisted of approximately 40, 50 silver dollars, some old Morgan quarters, a few Barbaras, and halves and quite a few dimes.

I'd say we had about $85 face value in dimes, approxi- [Tr. 74] mately 400 face value in that cabinet alone. Of course, there's $2 in a roll of nickels, there's two times 99 there, and a dollar times 55, but all in all with the pennies and—it would be around that area, I would guess, face value.

Q. Five hundred to 800 in face value?

A. Roughly. I mean I—we have our records there, but my memory isn't that good, sir.

Q. Certainly. I don't expect a statement to the penny under these conditions. And the insurance claim which was filed in the amount of $2541, is that a reasonably accurate estimate of the numismatic value of the coins which were missing?

A. It is. I recall as my wife and I were doing this, getting this list ready to submit to the insurance company, I think she was overly conservative on some things, but that's neither here nor there. It's very close, I guess.

Q. So we can keep these figures straight, 500 to 800 face value (Indicating and writing figures on blackboard) then it would be fair to conclude, would it not, that this particular

group of coins, the missing coins, were worth approximately four times their face value in general?

A. Uh huh, that is correct.

Q. Now, would that estimate be applicable to the rest of your collection?

A. I'm sorry, sir, I don't quite follow you there.

Q. Would the rest of your collection, as nearly as you [Tr. 75] can estimate—now, I realize that you can't give me an exact figure—but as nearly as you can estimate, would the rest of your collection also be worth approximately four times the face value?

A. Well, that's pretty hard to say. Some coins, naturally, are worth considerably more than face value where others aren't, so I can't arrive at a very intelligent answer in that respect.

For instance, one penny can be worth a hundred dollars where another penny might be worth only a dollar, so it's much too diversified to conclude that——

Q. Now, do I understand correctly that the entire collection of a numismatic market value of approximately $25,000 was housed in a foot locker, and the box on top of the dresser, and the two dresser drawers?

A. No, sir, that is not all of it. We, as was stated before in the case, there was a great many valuable coins in the foot locker, but then we had other coins too.

Q. Where were these other coins kept?

A. At the time?

Q. Which were not in the dresser drawers, on top of the dresser, or in the foot locker?

A. They were kept in trunks.

Q. And where were those trunks located?

A. You mean where were they located? They were located in the bedroom, and we had one of them in the room [Tr. 76] in the rear. When I say "rear" I am speaking of a room adjacent to the garage in back. Don't be confused by the den, because that is also in the rear.

Q. This is disconnected from the house?

A. Disconnected from the house, so to speak, at that time. Fortunately those were all inventoried that we had taken. We were just on the tail end of our inventory really. All this other work had been done which required a lot of work every night and every day off and every Sunday, so we were

just on the tail end of it which resulted in the closet, in the drawers that we spoke of, in these boxes, and, incidentally, the coins in the foot locker too were also inventoried, so that work was all behind us.

Q. Without seeming to pry into your personal business, sir, when were you married?

A. In '63.

Q. And before that time you had had your own collection and the present Mrs. Pulati had had——

A. That is correct.

Q. —had her separate collection?

A. Yes, sir.

Q. Now, you testified, did you not, in the Preliminary Examination in this case, which was held on October 14, 1965 in the Municipal Court?

A. Yes, sir.

Q. And do you recall that testimony now?

[Tr. 77] A. Pretty well, sir. My mind might be a little hazy, but——

Q. Do you recall testifying that the old inventory was destroyed?

A. I very definitely do, sir. I told them in court that my original inventory I threw away, because I have a great habit of doing that. If I redo something and it's all new and nice and neat, I get rid of the other, but God love my wife, I thought I threw it out, but she latched on to it and I still have it. So that is a discrepancy that was there. We still have it, yes, sir.

Q. Well now, when did you first become aware, Mr. Pulati, that you would be called upon to testify in court on that occasion?

A. On that particular occasion?

Q. Yes.

A. You mean when I received my Subpena?

Q. Yes.

A. God, sir, I don't know. I received so many. I don't recall the date in my mind. I just don't remember.

Q. You did know before testifying there that you would, or probably would be asked about what you lost, did you not?

A. Certainly.

Q. And incidentally, the inventory which you testified had been destroyed, where did you find it?

[Tr. 78] A. I didn't find it. My wife told me that it was still there. I thought that I had thrown it out, just assuming that I had, because knowing myself, that's the way I do things. The new one is made up, I really have no use for the old one, none whatsoever, at least at the time I felt I didn't.

Q. All right. Now, on February second it's true, is it not, that you did not have the new inventory completed at that time?

A. With the—now my mind becomes a little hazy. As I said before, we had most all of it completed with the exception of—I believe a few more. We were very close to having completed it.

Now it rings a bell. One particular denomination that we lost almost in its entirety, and that were the dimes, the mercury dimes. Those were the ones that we are really low on now. In other words, thinking in terms of our stock, we were pretty heavy on everything, but we are low on the dimes, because we were working on the dimes when the other coins were missing, and the dimes were missing along with them, and they were the mercury dimes.

So I believe with the exception of maybe some other little odd things I know, and I remember very well, that we hadn't completed the dimes. We were still working on them.

Q. I see. So the new inventory was——

A. Pretty much completed.

[Tr. 79] Q. Nearly, but not really complete on February second?

A. No, because we were still working on the dimes when they were missing.

Q. Well then, it wouldn't be consistent with your habit, as you have testified here, to have destroyed the old one at that time, would it?

A. We still had the coins. They were out there. The other would have no bearing as far as keeping it is concerned, as far as I am concerned.

Q. Well, correct me if I misunderstand. I understood you to testify that ordinarily when an inventory is no longer needed by you, when it's been replaced, then you will dispose of, or destroy——

A. Yes.

Q. —the earlier one?

A. Yes.

Q. But in this case then the earlier testimony which you gave that the first inventory had been destroyed would be inconsistent with this custom, would it not?

A. Well, let me say this: When we naturally had to submit the list to the insurance people it was, as I said before, a process of elimination. In other words, we had to work on our new inventory book and in addition to that, because after all, what was taken you couldn't remember everything, so you had to figure out what we had taken with our new inventory book, and we still had the old, the [Tr. 80] original, my original and her original inventory book, that we had to work with.

Otherwise we would have been dead as far as getting a realistic figure to submit to the insurance company. We certainly weren't going to claim something that wasn't missing unless it were, and we had the proof there, and the insurance people went over our books and did the subtracting and this and that with us too. We spent considerable time on those books.

Q. Now, Mr. Pulati, as I understand it, the claim which was submitted to the insurance company was based on the new inventory?

A. This is true, but we worked on the old inventory book.

Q. And this inventory was completed after February second, was it not?

A. Yes, it was pretty well completed. In getting back to the——

Q. But this inventory, the new inventory—when I speak of the old inventory I will speak of the one which was in existence before February second, and the new inventory the one which you completed after that.

A. Uh huh.

Q. Now, on February second the one inventory which was complete and accurate was the old one, was it not?

A. Uh huh.

[Tr. 81] Q. Yet even after the loss your insurance claim was based on the new inventory; is that correct?

A. Well, we still had to work with the old inventory book too, sir.

Q. Yes, but your claim to the insurance company was submitted approximately two weeks after the loss, was it not?

A. That's right; that is correct, uh huh.

Q. And this claim was based on the new inventory?

A. On the new inventory.

Q. And this was an inventory which was in fact completed after the loss; is that correct?

A. I am sorry, I am getting a little foggy here. Would you mind just going through that again? You are confusing me with this old inventory book, and I am sorry. Would you mind saying that again?

Q. All right. Your claim to Liberty Mutual for the loss was submitted to them approximately two weeks after the loss; is that correct?

A. That's correct, yes, sir.

Q. And this claim was based on a process of deduction and so forth?

A. That is correct.

Q. From the new inventory?

A. The new and the old. We had to work together with it.

Q. You used them both?

[Tr. 82] A. Yes. And the appraiser from the insurance company double-checked with us, and we proved—that was our only way of proving because, in other words, the new inventory book stated the coins that we still had, the old book stated the coins that we still had and also ones that were missing. So you had to go by that to establish the right amount, the right denominations, the right grading. And we proved it to the insurance adjuster, and this is what necessitated so much time.

It took about two weeks to do it, but we did work along with the old book because of that reason. The new book, everything in the new book, sir, we still had, but there were many things that were missing, but those were still in the old book, so it was——

Q. Then it would have taken quite a little effort on your part at that time to work from the old inventory book and from the portion of the new inventory which you had to finally arrive with the claim which you submitted to Liberty Mutual?

A. It certainly did, sir, every night.

Q. And these events, so far as compiling the inventory for this claim, are they clear in your mind at this time, Mr. Pulati?

A. Actually my wife is responsible for all that work. I

helped as much as I could, but fortunately she has a good memory, and we worked together. I referred to the books and [Tr. 83] checked back with her, but it necessitated two weeks of every night after work on my part. During the day she would work on them, days off and Sundays, two weeks' time we had it done.

Q. Almost every night during this two-week period you were working with both the old and new inventories in order to arrive at your final——

A. Well, a year and a half ago, as best my memory serves me, yes, we worked on it pretty consistently. This was just about an ordeal with us.

Q. Then after this two weeks of working pretty consistently every night with both inventories, then do I understand that your testimony given in the Preliminary Examination was in error as to the old inventory?

A. You mean about destroying it?

Q. Yes.

A. Well, when the old—it was an error, yes. I thought that I didn't have it, but we still had it. And this was after we had used it to get the proper figures together. After that we were complete as far as our inventory was concerned. We had completed our inventory. The only thing that was left to do were the Mercury dimes, and then they became missing, so there was really nothing left.

So at that time I felt that I no longer had any use for the old inventory book, but we certainly had use for it after February second, because without that it would have been [Tr. 84] impossible, I think.

Q. Now, on the night of February second when the officers came to your home in response to your call, did you have these inventories in your home then?

A. Oh, yes.

Q. Both the incomplete new one and the old ones?

A. Our inventories have always remained in the home, yes, sir.

Q. And did you report to the officers everything that was missing?

A. Oh, no. It would have been impossible. As I say, this is exactly what we had to do: We had to find out exactly what we had completed so we knew what we already had. Then we had to find out what was missing, and this is what

necessitated all this time.

We couldn't have possibly; I don't think they'd have even asked. It was a figure you couldn't come up with. We had an approximate idea of face value what was missing, and even then it was a hurried thing. We were emotionally upset and——

Q. The officers didn't ask you what was missing?

A. No. To my knowledge, I don't recall them asking me at all. Remember, they were talking to both me and my wife, and I don't recall them asking what was missing. It was coins, and I am sure that denomination came into the picture, but to go into a lot of detail——

[Tr. 85] Q. Now, Mr. Pulati, are you acquainted with a gentleman by the name of Dave Spero?

A. Yes, sir.

Q. And, as a matter of fact, he has visited your home and looked at your coins, hasn't he?

A. No, Dave Spero was never in my home prior to this. As a matter of fact, as we testified earlier, there were only two people that have ever been in our home and were shown our coins, and that was Mr. Chimel and Mr. McKenzie, who sold us the home, and who happened to be somewhat of a collector, but he also——

Q. When was Mr. McKenzie in the home?

A. It was shortly after we bought it. He visited us a few times because we told him we were interested in speculation, and at a later date we'd be interested in buying another piece of property probably, so we became pretty good friends.

Q. And you say he is also a coin collector of sorts?

A. Well, some sorts, yes. Never in a big way, but——

Q. Do you recall receiving four or five bags of pennies at your home sometime within a month or two before this incident?

A. Yes. He got us some and we looked through them, uh huh, looked through a few. This was Mr. McKenzie.

Q. Do you know who delivered those bags to you?

A. I believe he did. I am sure he did.

[Tr. 86] Q. Mr. McKenzie?

A. I am sure he did, I don't recall now whether I was at work at the time or not, but I feel very sure he did. I don't

really know. I assume he did. He was the one that was getting them for us.

Mr. Spero, incidentally, has been in our home, but only comparatively recently. He had never been in before. In fact, shortly after we were burglarized he made the comment that he didn't even know we lived there.

Q. He didn't what, sir?

A. He said he didn't even know where we lived. This was a comment that Mr. Spero made shortly after the burglary. It was just a comment in general.

Q. This is shortly after you were burglarized?

A. This is what, sir? I am sorry, I didn't—you mean this is what he said?

Q. Yes.

A. Yes, that is correct.

Q. Is there any reason, Mr. Pulati, why on the night of February second when you went to the back door you said, "We have been knocked over."?

A. Oh, I suppose it's just a vernacular. I don't know what, but it just struck me funny. I had a very, very strange feeling that night. I had never been——

Q. Have you ever used that term before?

A. "Knocked over"? Oh, I think a lot of us pick up [Tr. 87] this vernacular of the street, or whatever you call it, gangsterism, and I recall—well, never mind. Normally I don't talk in that vernacular, I don't think. I just happened to use that expression.

Q. As a matter of fact, Mr. Pulati, you didn't report any medals missing to the police, did you?

A. I didn't make mention of medals at all. As a matter of fact, medals are not my department. I don't know too much about them. My wife collects them.

Q. And to your knowledge, did Mrs. Pulati report any medals missing?

A. To my knowledge, I don't know, sir. I don't recall because there were two officers. My wife at times was speaking to one and at other times I was speaking to the other, and really you can't just go back and remember everything that was said.

Mr. Monroe: You may examine.

Redirect examination.

By Mr. Enright:

Q. Mr. Pulati, when you called the police and they arrived five minutes after you came home, did they immediately rush in with their records as coin collectors, or did they come in with uniforms on?

Mr. Monroe: I will object to the form of the question, Your Honor.

The Witness: It seems to me they had uniforms.

The Court: Overruled.

[Tr. 88] By Mr. Enright:

Q. Were they asking you about money being stolen from your house in the burglary?

A. We had told them that we were burglarized, and that our coins were missing, yes.

Q. And asking you about how much in cash value it was; is that right?

A. It seems to me that—frankly, sir, my wife did most of the conversation, but I am very certain that they naturally asked approximately what was taken value-wise, and I believe that we, or she arrived at that figure, which afterwards I told her, I said, "It is pretty difficult to tell anyway."

Q. You didn't sit down and consult your records and immediately go into a long series of checking out to find the numismatic value of these coins?

A. No, sir. That would have been much too lengthy. The officers couldn't possibly have stayed there that long.

Q. They didn't ask you if you had things like 1947-S dimes, or 1946-S dimes? They were talking in terms of money value?

A. Money value I am sure.

Q. Medals as a term that we are using, these are commemorative type of——

A. Statehood medals that she collects, yes. Tokens. Tokens; Civil War tokens, and these all have a value for certain numismatists. There are some numismatists that could [Tr. 89] care less for this type of thing, regard it as junk, and there are others that are very fond of it and collect and buy it.

Q. Did your wife keep these in her part of the collection?

A. Yes. As a matter of fact, we have, or rather, she has a duplicate of every medal that we found, that we have there. She has a duplicate because she naturally wanted to keep that for her collection, and the other eventually she had hopes of selling.

Q. She had a duplicate of every medal?

A. Of every coin that was listed on that sheet, yes, sir, and every coin that was confiscated.

Q. Now, the burglary was February second?

A. Yes, sir.

Q. And——

Mr. Enright: Can we have a stipulation, counsel, as to the date of the Preliminary?

Mr. Monroe: Certainly.

Mr. Enright: I believe the stipulation is, Your Honor, and probably the Court can take judicial notice, that the Preliminary was—I will let the Court——

The Court: October 14.

Mr. Enright: 1965.

The Court: 1965.

By Mr. Enright:

Q. The Preliminary, Mr. Pulati, [Tr. 90] February second to October 14th, was approximately eight and a half months after the burglary; is that correct?

A. That sounds about right.

Q. And this was certainly after the time that you had worked with your old——

A. Oh, yes.

Q. —ledgers, and you prepared your new one; is that right?

A. Yes.

Q. And this was after the time you had submitted your claim to the insurance company; is that correct?

A. That is correct, sir.

Q. And you thought that you may not have had the old ledgers still around?

Mr. Monroe: I will object to counsel telling him——

The Witness: That was——

The Court: Well, all right. Sustained.

By Mr. Enright:

Q. So to make, to clear up any possible—you did not testify in the Preliminary on February second. We didn't have the Preliminary the same day of the burglary?

A. Oh, no.

Q. And we didn't have it ten days later?

A. Oh, no, much later. Months.

Mr. Enright: Nothing further.

[Tr. 91] Recross examination.

By Mr. Monroe:

Q. Testifying in the Preliminary Examination eight months later, did you need any records to refresh your recollection at that time, Mr. Pulati?

A. Records in regards to what, sir?

Q. As to what was missing on February second?

A. Oh, at that time we had—I had oriented myself the night before pretty much, and these figures—my memory is certainly not very good, like earlier you asked me about——

Q. Well then, would it be fair to say you did need something to refresh your memory?

A. Sure. I have to look in my notes some time. I don't think about this every day of my life.

Q. Medals and tokens are known as fantasy coins, aren't they?

A. I really can't answer that. I'm not especially fond of them. I appreciate my wife having them. I enjoy looking at them occasionally, but I don't know too much about it.

Q. Are you familiar with the International Association of Professional Numismatists?

A. Am I—I am sorry, what did you say?

Q. You know the existence of this organization, of an organization by that name?

A. I have heard of it.

Mr. Monroe: No further questions.

[Tr. 92] Redirect examination.

By Mr. Enright:

Q. Do you know if you may have looked before you testi-

fied at the compilation of loss that you prepared for the insurance company?

A. No, I didn't even look at it, no.

Q. I mean before the Preliminary?

A. Before the Preliminary, oh, yes, then I looked at it.

Mr. Enright: Nothing further.

Mr. Monroe: Nothing further.

The Court: All right. You may step down.

Mr. Enright: May Mr. Pulati be excused temporarily, Your Honor? I believe he will be a witness a little later.

The Court: All right. You may be excused, if you care to go, Mr. Pulati.

Mr. Monroe: Did you say, Mr. Enright, that Mr. Pulati would be called again?

Mr. Enright: Yes.

Mr. Monroe: Fine.

The Court: All right, call your next witness.

Mr. Enright: People call Mr. Bert R. Slocum.

BERT R. SLOCUM, produced as a witness on behalf of the People, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Enright:

Q. Mr. Slocum, I see your name is Bert [Tr. 93] R. Slocum. Are you sometimes called BR?

A. Yes. In fact, that's what I go by.

Q. And are you active in the field of coin collecting?

A. Yes.

Q. Do you make your living at this?

A. Yes, I do.

Q. Directing—how long have you been in the business?

A. Almost five years.

Q. Directing your attention to August of 1965, approximately August 14 and 15 of '65, were you in business in this County?

A. Yes, I was.

Q. Where did you have your business?

A. This was at 153 North Glassell in Orange.

Q. And what was the name of the business?

A. The Money Vault.

Q. What type of business was this?

A. It was business of buying and selling numismatic-valued coins, and also we ran a teletype service for individuals.

Q. What is this teletype service?

A. This is, if you—smaller shops usually have them, not only the large ones. If you can't find a particular coin, like a lot of people walk in and want a particular series that's hard to find, well, you always have an access [Tr. 94] if you have a teletype there to find it, and not turn the customer, and get it for them. Whereas, if you have a four or $5,000 coin, you might not have one in stock and another person on the circuit does, and you still make a certain percentage, just like the stock market.

Q. You would contact other people in the business; is that correct?

A. Well, you would just run a message on the teletype to all people that are on the circuit throughout the United States and Canada.

Q. How many people are on the circuit, if you know?

A. We have 321..

Q. And this information then would be spread out among the various clubs; is that correct?

A. Well, not clubs, but actual dealerships throughout the United States.

Q. If they happen to have your coin or the coin you are interested in, they would contact you back; is that right?

A. Right. They would send you a message back in reply to yours.

Q. Directing your attention to around August 11, 1965, Mr. Slocum, were you operating your shop personally yourself?

A. The dates are kind of foggy, but I believe it was August the eighth I went into the hospital, and I didn't [Tr. 95] get out of the hospital until the 11th, or maybe it was the 12th. My mind isn't too clear on that. It's been over a year ago, but I spent about I spent about four or five days in the hospital, and I am pretty sure it was from the eighth to the 11th or 12th.

Q. What were you in the hospital for?

A. I had an ulcer attack.

Q. Upon getting out of the hospital did you immediately go back to work?

A. No, I couldn't return to work for six months afterwards.

Q. Now, who was taking care of the shop during this period of time?

A. Well, the actual person who was taking care of the shop at 153 North Glassell was my sister-in-law.

Q. And what is her name?

A. Pauline Lane.

Q. And did your wife have anything to do with the shop?

A. No. My wife ran another one of our businesses at the time that we had.

Q. Now, directing your attention to the early morning hours of August 15, 1965, did you receive a call in relation to your shop, your business?

A. Yes, we did.

Q. Was this from a police department?

[Tr. 96] A. Yes. Orange Police Department.

Q. Going back a moment, using the August 15th date as a point of reference, how long had you been in business at 153 North Glassell in Orange?

A. I had been in it exactly a month and two days.

Q. Did you go to your business after receiving the phone call from the police?

A. Yes, I did.

Q. What time did you arrive at the Money Vault?

A. Here again, the time isn't clear in my mind, but it was real early, it seems like 7:30, eight o'clock in the morning.

Q. About 7:30 in the morning?

A. I would say so.

Q. Upon entering the business, what, if anything, did you observe?

A. Well, when I first entered it, of course, it's a long, narrow building, and as you go in you can see all the way to the back, and I kind of saw, I think there was one detective there, or two. This is kind of foggy too. And then a regular policeman in his uniform.

Looking back at first it didn't apparently seem to be any-

thing gone, because my first showcase where I had all my proof sets and all this stuff, higher-priced material in there, didn't even look like it had been touched, and then, of course, I went to the next showcase. So what I did is, I [Tr. 97] walked back, kind of looking over one at a time. As I got to the second showcase it looked like someone had just divided it in the middle and took half of it out on—it would be the side towards the street, and then, of course, as I walked back we have little cubby holes which we stack up piles of silver dollars in them, and we noticed that this had been taken out, and they had dripped them all, or someone or something had dripped them all the way across the floor on the way outside where they had hastefully picked it up and made out with it.

Then, of course, as I went to the back showcase I noticed a large piece of plastic——

Mr. Monroe: I think he's answered the question, Your Honor.

The Court: All right. Let's have another question.

By Mr. Enright:

Q. What else did you notice?

A. Well, at that time I had considerable amount of coinage on the floor, which I was very concerned of, because it was something that every dealer specializes in something, and I specialized in Washington quarters. So I looked over the showcase, and there was somewhere around 20, $25,000 worth of coins on the floor, and, of course, I noticed right then that they hadn't been touched, so I walked around to make sure, any they were all full. No one had even touched them. They were right in the way.

And then, of course, I went behind and walked up and [Tr. 98] down the counter to see what had been missing. Then after the end of this is the time that I went to the back and saw where they broke through.

Mr. Enright: Your Honor, may these be marked as People's next in order for identification purposes?

The Court: All right. Will be marked Three and Four For Identification.

By Mr. Enright:

Q. Mr. Slocum, I show you People's Number Three For Identification purposes, and ask you if you can identify this, and also People's Number Four?

A. Well, Number Three is the back of our shop—I shouldn't say the back of our shop—it is the alley behind our shop, which—we have no back entrance to our shop, and this is one. Is that enough foundation?

Q. Yes. Is that the back of——

A. Our shop sets in the front and then directly behind our shop there is a shoe shop storage area, and behind that there is a television storage area, and this is the immediate back entrance to the television storage on the left, and then through that wall is the shoe shop, and through that wall is the coin shop? (Indicating.)

Q. Will you look at the other photograph?

A. This is the front view of the coin shop and the shoe shop.

Q. And are these fair and accurate portrayals of how the back of the building looked and how the front of the [Tr. 99] building looked on the morning of the 15th of August?

A. Yes.

Mr. Monroe: I will stipulate the photos may come in, if counsel wishes to offer them.

The Court: All right. Exhibits For Identification Three and Four will be introduced into evidence.

By Mr. Enright:

Q. Did you go to the back of your shop—do you have a storage—strike that.

Do you have a storage area right in the immediate part of the back of your shop?

A. Yes. It's actually not a storage area. It is just a completely empty area behind our room which houses the showcases and all this, we have another room behind, which is just a completely empty room, because we have no use for it. I don't know what use it would be.

Q. What, if anything, did you notice in the back of your shop?

A. Well, going towards the back, of course, along the showcases, there were silver dollars spilled on the floor, and then towards the back, of course, there was debris in front of the hole where it had been caved in.

Q. You noticed a hole through there?

A. Yes.

Q. Did you have occasion to look in the storage area behind yours?

A. Yes, we went in there later on that morning. The [Tr. 100] person that owns it came down and opened up, Mr. McLaughlin, or his daughter it was—he was on vacation—and, of course, we looked into it from there and saw the shoe boxes on the floor and all that where it had been broken through from both places from the television shop to the other one, and we boarded it up.

Q. Did you notice another hole in that area?

A. There was a hole from—of course, the back of our shop there was a hole, and then further back, going into the television shop, there was another hole that had been busted in there.

Q. Did you notice the area——

Mr. Enright: Yes, may these be marked People's next For Identification, Your Honor, the photographs just shown to counsel?

The Court: All right. Will be marked For Identification Five and Six.

By Mr. Enright:

Q. Did you have occasion to go outside the back of the building and look at the back of the building at all?

A. Yes. I went around the back just to see where they had came in, and noticed that there wasn't any lock on the back door there. I think they have a padlock on there, and it looks—I don't know how they got it off. Maybe they cut it with wire cutters, or something.

Mr. Monroe: I will object to the conclusion of the [Tr. 101] witness. He can testify to what he saw.

The Court: Oh, I don't think it makes much difference, so let it in.

By Mr. Enright:

Q. Mr. Slocum, I show you this picture and will you point this picture in the direction of the Jury?

Mr. Monroe: I will object, Your Honor. That picture is not in evidence.

The Court: All right. Just don't display it to the Jury yet.

Mr. Enright: I think it is in evidence, Your Honor.

The Court: Pardon me.

Mr. Monroe: I am sorry, I thought it was one of the others.

The Court: All right, go ahead.

Mr. Enright: It appears to be a picture of the back of the building.

The Witness: Yes.

By Mr. Enright:

Q. People's Number Three. You mentioned that you noticed, you looked at a door in the back of the building. Could you point to the door on that photograph?

A. It's this door on the left here. Not the other one. (Indicating.)

Q. Will you try and put an "S-1" on that door that you are pointing to on the photograph? I don't know if it [Tr. 102] will take on that type of photograph.

A. (Witness indicated.)

Q. Did you notice anything about the lock—strike that.

Was the door open when you looked at it that morning?

A. I don't believe the door was open. Why I say I don't believe, because there was also a police officer around there, and I can't remember if the door was open or closed at the time.

Q. Did you notice anything about the lock?

A. Right. There wasn't any lock on it, and I think, as I remember, one of the police officers made a comment that——

Mr. Monroe: I will object to any comment the police officer made. Hearsay.

The Court: All right.

The Witness: I can't remember. Anyhow, this is the position the lock was in. It is a regular hasp deal. It is not a doorknob lock on it.

By Mr. Enright:

Q. No, Mr. Slocum, if we were go go in that door, door that you marked "S-1", where would we be? in what portion of the building, and who has control of it?

A. Well, if you go in this door right here, the one we are speaking of, there is a room about, I'd say 15 by 20, which is all boarded in, and which is a television storage for some television shop over here. I don't know the [Tr. 103] name of it.

Anyhow, they store all their TV's in here, and it is one separate room in here that this door leads into.

Q. And if we were to break through the wall and go into the next room, where would we be? By "the next room" I mean the room going directly deep in towards the building?

Mr. Monroe: I will object, Your Honor, to the form of the question as assuming a fact not in evidence.

Mr. Enright: I think that there has been testimony on that, Your Honor.

The Court: Overruled.

The Witness: If you go directly through this shop, the only way you could go through it would be to go through the wall, you'd be immediately in the area of the shop shop, and there's about a 35-foot span in between there before you would go into our shop by going through the wall.

There's no doors in between any of these places that lead in or out.

By Mr. Enright:

Q. I believe you testified that you saw two holes in two different walls. Where was the first wall now, going from the back of the store forward? where would that first hole be?

A. Well, the first hole I saw, of course, would be in the back of my shop.

Q. All right. Going the other way, where was the second hole then?

[Tr. 104] A. The second hole would be in this wall here, the second wall behind the door. (Indicating.)

Q. Is that between the shoe storage area and the television storage area?

A. Right.

Q. Mr. Slocum, I show you People's Number Five For Identification, and People's Number Six. Will you look at People's Number Five first?

Do you recognize it?

A. Yes. This is the hole that was in the back of our room when we came in that morning.

Q. And is the picture, as you look at the hole, are you looking from your store at a hole in the back?

A. Right, directly—the farthest wall back, the furthest back wall, I guess you'd call it, of the shop. As you go in the front it's all the way to the rear. This is the very farthest wall back.

Q. And was there plaster on the floor of the wall when you saw it? (sic) Strike that.

Was there plaster underneath the hole area on the wall?

A. Yes.

Q. Now, will you look at the other photograph, People's Number—I believe that's Number Six? Will you look and see what number that is?

A. Yes, Number Six.

Q. Can you recognize that?

[Tr. 105] A. Yes. This is a place where the—where we stored all our valuables.

Mr. Monroe: These photographs are not in evidence and should not be displayed to the Jury at this time.

The Witness: This, of course, is where the circle was where we had our valuable coins that were taken which were in booklets.

By Mr. Enright:

Q. The circle in that photograph, what portion of the counter is that?

A. The circle is supposed to be in the bottom part of the counter. It's down here, but it goes up a little high.

Q. And can you, using a—do you have the red pencil there?

A. Yes.

Q. Put an "S-2" where the valuable coins were stored.

A. (Witness indicated.)

Q. Is this the area from where the—the area where the coins were missing after the burglary?

A. Yes, this is one of the areas.

Q. Where else were the coins missing? Can it be seen on that photograph?

A. Well, you can't see it, because the doors are closed. It's a V from behind the counter, but if you could see from this front of the counter, you could tell where they were missing.

Q. Did you keep your most valuable coins in the area [Tr. 106] where you put the "S-2"?

A. Yes.

Mr. Enright: Your Honor, may People's Five and Six go into evidence at this time?

The Court: All right. Five and Six may be introduced into evidence as Plaintiff's Exhibits Five and Six.

Mr. Monroe: I think Exhibit Six shows evidence on its face of markings other than those that the witness put on and those which are part of the photograph. I think it should be received subject to this knowledge that it's been tampered with to this extent.

The Court: Let me see it. What are you referring to?

Mr. Monroe: I believe there are yellow markings on it, Your Honor.

Mr. Enright: I believe he is referring to a yellow circle, Your Honor.

The Court: Yes, yellow mark or blur, whatever you call it, on Exhibit Six, the Jury will disregard as having no particular reference to anything. I don't know how it got on there.

Mr. Enright: I have the culprit in the courtroom, Your Honor, and there will be testimony how it got on there, but I don't believe Mr. Slocum has made testimony regarding a yellow mark. He has put a red "S" in the area that he testified to.

The Court: All right.

[Tr. 107] Mr. Enright: Your Honor, I wonder at this time if the Jury could view the pictures that we have put in so far in evidence?

The Court: All right. Pass all the pictures around.

In looking at the pictures, Members of the Jury, if two jurors look at one picture at the same time, it goes about

twice as fast. Would you please hand this over to the jurors?

Proceed.

By Mr. Enright:

Q. Mr. Slocum, what are Type coins?

A. Type coins are a special variety of coins that isn't the everyday new coin that is out on the market, like they can distinguish them as a special type of one coin, like an old Liberty-seated half or an old dollar, or something like this. It is one particular type for each series.

In other words, instead of collecting a whole series, a person will take one type of it.

Q. Are these valuable coins?

A. Well, usually a Type coin is the more valuable coin than a regular coin, because the people, instead of having to collect a whole set, they just collect one, and they buy a more expensive coin.

Q. Now, did you after the burglary, did you make an inventory of the coins that were missing?

A. Yes, I did.

Q. As to name and year and type and such?

[Tr. 108] A. Yes.

Q. Did you also give an estimate of value?

A. Yes, I did.

Q. Was this a face value or a numismatic value?

A. Well, it was a wholesale numismatic value.

Q. Now, this is something new. There is a wholesale numismatic value and there is a retail?

A. Yes.

Q. And you are in the business of selling coins; is that correct?

A. Yes.

Q. Is that distinguished by the blue book and red book?

A. No. This is distinguished entirely on the teletype market prices which fluctuate every day.

Q. So in addition to listing the coins that were missing, you placed a value, a wholesale value as relating to your business; is that correct?

A. Yes.

Q. What was the total loss on a wholesale basis?

A. I think we came up with a figure—when I say "I think" I don't have the records in front of me—it was $23,000 some odd dollars.

Q. And this, of course, is not the exact face value, but the wholesale value that you mentioned?

A. Yes.

[Tr. 109] Q. When you made this list you also listed the nature of the coin.

Directing your attention to one type of coin, did you have in your store prior to the burglary an 1877-S Trade Dollar?

A. Yes, I did.

Q. And among other coins was this coin missing after the burglary?

A. Yes, it was.

Q. What is a Trade Dollar? Is it paper money?

A. No. It's similar to your silver dollar, made in the 1800's for kind of like a Continental dollar that you trade overseas. In other words, the United States shipped them overseas and they were used in Japan and China and all around in there. It's kind of like a good-will dollar. It was worth one dollar in silver, 92 grams, I think it was.

Q. And did this particular dollar have unusual markings that you could recognize?

A. Yes, it definitely did.

Q. Now, directing your attention to the Defendant, Mr. Ted Chimel. How long had you known him prior to the burglary of August 15th?

A. I am not for sure on that. Possibly six, eight months, something in that category.

Q. Had you known him before you moved your business down to Orange?

[Tr. 110] A. Yes, I did.

Q. And you had been down in Orange a little bit over a month; is that correct?

A. Yes, a month and two days.

Q. Did Mr. Chimel come into your shop in Orange?

A. Well, at the time I was there before I went to the hospital he came in a few times. Not regularly, though.

Q. And had he come into any other coin shop you had before the Orange shop?

A. That I can't remember. I think he come in the one

we had out in Olive, but I don't think he was ever in our Fullerton shop. I can't be sure on that.

Q. Had he been to your house at any time during——

A. Yes.

Q. I direct your attention to approximately three months before the burglary, approximately May of 1965. Was Mr. Chimel at your house?

A. I imagine he was, because for this reason: For four or five months he visited us maybe once a month, or maybe sometimes twice a month.

Q. Well, do you recall any conversation with Mr. Chimel regarding insurance, your insurance?

A. I can't remember if this was in May. It was before the burglary. Seems like it was in June to me, but I can't be sure about the date, but, yes, we had a conversation, which he had at the time, the way we led into the conversa-
[Tr. 111] tion, he at the time had——

Mr. Monroe: I object, Your Honor. Inadequate foundation at this point.

The Court: All right. Lay the foundation.

By Mr. Enright:

Q. Well, the conversation you are speaking of, you say it happened, you felt it was in June?

A. Well, I feel—it's been so long ago I can't even remember, to tell you the truth, but it was prior to the burglary a couple of months.

Q. And where did the conversation take place?

A. The conversation took place at my home.

Q. And who was present outside of yourself and Mr. Chimel?

A. Well, see, there was actually two or three conversations that took place there. I think maybe I should explain what he was doing there at the place, because it's hard just to lead right into what went on unless you understand actually why he was there; but what happened was just a regular——

Mr. Monroe: I think the witness has answered the question.

The Court: Well, he didn't say who else was there, if anybody. Was anybody else there when you talked to him?

The Witness: Well, depends on which time. I mean this is the whole thing.

By Mr. Enright:

Q. There was a series of conversations?

[Tr. 112] A. Well, a series of times he had come over and we had conversations, a group of us.

Q. Directing your attention to a conversation dealing with insurance, who was there during this conversation?

A. At this conversation just myself.

Q. And was this at your house?

A. Yes, it was.

Q. What did he say to you and what did you say to him regarding your insurance, to the best of your recollection?

A. Well, pertaining to insurance, he had in the past, and he was always telling me about some big deal he had, going to make him 50,000 or a hundred thousand dollars.

Mr. Monroe: I will object, Your Honor, as not responsive to the question. The question was: What was said by him and by you?

The Witness: This is leading up to that.

The Court: Overruled.

The Witness: So, in other words, he had all these things going all the time where he claimed he was going to make a fortune here and a fortune there, so——

Mr. Monroe: I will object again, Your Honor. He is not responding to what was said at that time.

The Witness: This was exactly what was said at this particular time, at this night of the conversation when the insurance came up.

So anyhow, the way we got into insurance is he was say-

[Tr. 113] ing he had a group of people from back East which we never took him serious on anything he said, because he was always talking in terms of 50 to a hundred thousand dollars, which, you know, it's just the way you take a person like this.

So, anyhow, we thought he was joking. When I say "we" I am speaking of my wife and myself, and so he says, "I have a group of guys coming out from the East to knock over a $50,000 collection in Fullerton."

Mr. Monroe: Your Honor, I'd like to interrupt at this

point, and ask leave to take the witness on Voir Dire. He's indicated his wife was present at this conversation.

The Court: Yes, I think that's right. All right, go ahead.

The Witness: And so——

The Court: Just a moment. He is going to ask you some questions.

Voir Dire examination.

By Mr. Monroe:

Q. So far as you know, you only had three conversations with Mr. Chimel at your house?

A. No, sir, that's not true. I don't know how many we had.

Q. How many did you have with him at your house?

A. I don't remember.

Q. And you don't remember the date of a particular conversation which you were just testifying to?

A. No.

[Tr. 114] Q. Now, do you remember who was present at this conversation?

A. Yes. As I said before, I was present.

Q. Where was your wife at this time?

A. My wife was in the kitchen, working.

Q. How far is the kitchen—what room were you and Mr. Chimel in?

A. We were in our teletype room.

Q. How far is that from the kitchen?

A. Oh, possibly 30 feet, 35.

Q. Is it possible to hear from the kitchen to the teletype room?

A. Is it possible?

Q. Yes.

A. No, I wouldn't say it's possible. I wouldn't say it's impossible, but I wouldn't say it's possible either.

Q. It would be, at least you'd have to raise your voice, I take it, then?

A. Yes.

Q. Did your wife enter at any time during the conversation to which you refer? did she enter the room where you were speaking?

A. You are talking—all this is on the insurance matter?

Q. That's right.

A. This isn't the other conversations?

[Tr. 115] Q. Yes.

A. No, not at that time.

Q. Then this conversation that you had with Mr. Chimel regarding insurance, no one else entered during the course of that conversation, and you and Mr. Chimel remained in the teletype room throughout the conversation; is that correct?

A. I can't remember. She might have went in and out and back and forth. I mean it had no bearing. We never even thought of the incident as being anything. I didn't keep track of whether she went in and out of the room, or had work to do in the room, or anything. I can't remember at this time.

Q. As far as you recall she may have been present during some of the conversation?

A. She may, but I can't be for certain.

Q. Do I understand correctly, that you had more than three conversations at your home with Mr. Chimel during this period?

A. As far as Chimel and myself, no; he would just—well, the answer would be I can't remember. It possibly could have been two. I mean I didn't keep track of every conversation, because they were meaningless. It was just a visit. I was buying material off of him. It was just a visit that brought him over. That was all.

Q. It could have been two and could it have been more?

A. It could have possibly have been four. But it [Tr. 116] seems like that would be a maximum.

Q. From two to four, then——. And over what period of time did this series of conversations extend?

A. Well, where do we get the term "conversation". it's a visit, whereas——

Q. Well, let's put it this way then: Communication between you and Mr. Chimel at your home?

A. His visits were possibly four of them.

Q. And over what period of time?

A. Excuse me. Approximately month and a half two months, somewhere in that category.

Q. Commencing when, Mr. Slocum?

Mr. Enright: Your Honor, I think we have gone beyond his Voir Dire. He wants to find out who was there.

Mr. Monroe: I am trying to find out when this conversation was too. He is not certain who was there.

Mr. Enright: The only purpose, Your Honor, is, if there is a third party, to ask the third party what they heard. This witness can testify to what he heard, if it was in a moving van.

The question of his objection would be if there was a third party so he would know that witness to question him as to what conversation that witness may have heard.

The Court: Now, what's your question, Mr.——

Mr. Monroe: I am trying to get the period——

The Court: Well, what was your question?

[Tr. 117] Mr. Monroe: My question, Your Honor, was when the first of these conversations took place. There is a series of three or four, two or four, and the witness doesn't know which of the conversations he is repeating at this point.

The Witness: You didn't ask me the first conversation. You said the last, pertaining to the insurance. You didn't mention any of the rest of them.

By Mr. Monroe:

Q. No. I asked you during what period of time this series of conversations took place.

A. And I said a month and a half to two months.

Q. I see. And when then was the first one, as nearly as you can recall?

Mr. Enright: Your Honor, I think this is proper Cross Examination. We are talking about one conversation in the back of his room that he calls the teletype room, with Mr. Chimel.

The Court: All right. I think that's sufficient. If you want to question him further at an appropriate time, you may do so, Mr. Monroe.

Go ahead now. This is a conversation in the teletype room in reference to insurance?

Mr. Enright: Yes, Your Honor.

The Court: All right. Proceed.

Direct examination Continued.

By Mr. Enright:

Q. Now, will you tell us to the best of your recollection what Mr. Chimel said to you and what you [Tr. 118] said to him in reference to insurance? By "reference to insurance" that's the conversation we are talking about in the teletype room.

A. He just asked me how much insurance that I had on the coins, and I told him that I had 50,000, but I just moved so I had it reduced to 10,000, because I was putting the rest in the bank because of the insurance premiums and all the people being robbed and burglarized; that it just wasn't economical and feasible to have this much stock on hand.

And so this led into the conversation. He said he was —he had a group or a syndicate coming out from the East —of course, in my mind, my mind was just turning over in laughter, because repeatedly this had gone on before, where syndicates come out and he's got them making a hundred thousand here and 50 there on all these deals, and so he says, "We are hitting a doctor over in Fullerton for around 50 to 60,000."

So he asked me, he says, "How would you like to have your place knocked off?" And I said, "Well, this is ridiculous, because I wouldn't reduce it from 50,000 to 10,000 if I wanted to have my place knocked off." And that's about the extent of it. Except that the whole thing was kind of a jester.

Q. Was there any conversation at this conversation, the one in which there was a conversation about insurance that was in the teletype room prior to the burglary, about any [Tr. 119] protective devices you may or may not have in the store?

A. The only thing on this that I can think of, over in Fullerton I had what you call a silent alarm, which was costing me $35 a month, and I moved to the new location, and I had a different kind of an alarm system put in that I felt was adequate.

And, of course, he asked me what kind of alarm system I had. And I told him, of course, that it was Orco.

Q. What kind?

A. Orco, O-r-c-o.

Q. Directing your attention to the shop, did you ever have

occasion to show Mr. Chimel where you kept your valuable coins?

A. Yes. I was—I had just moved into the new shop and Mr. Chimel had brought me some merchandise that I bought books off of him before I went into publishing on my own. I used to buy them off him. And he was in there one day, and he saves 20-cent pieces, and he had asked me at that time if I had any. And, of course, I had them, just moving and everything, I had them all sorted in different pages and everything, and so I had to bring out two or three books to show them to him.

And, of course, at that time he liked better coins. Not your, you know, your lower priced coins, but he liked coins that were better, that were worth more money for the more investment he seemed to make more on them. But anyhow, [Tr. 120] the point is that he asked me for the 20-cent pieces to look at, and at that time I had them hid, as per the picture there, underneath the showcase in a certain spot. The reason being is because I had them together, and I was going to put them in the bank, because I had my showcases full of average-priced coins, but I had my real good stuff and my personal collection underneath.

So I showed these to him, and he seemed to like them, and he wanted to look through more and more of the books, so I got, seems like there was 11 books total—it might have been ten, but it seems like 11, that we had with the coins in them. And so finally, of course, I showed him all of them, and, of course, he saw where I put them underneath.

Q. Aside from your wife and your sister-in-law, did anyone else know where you kept your valuable coins, to your knowledge?

A. Well, I don't know the other person, but there was one other person, just a collector that came in that my sister-in-law showed one book to, some particular coins in that book. Of course, the man's been back. I think he was in two or three times when I was in the hospital, I think two or three times after that to look at coins. And this is the only one that knew about them outside of Ted and my wife and sister-in-law.

Q. Were these coins kept in the area where you marked on one of the photographs "S-2"?

[Tr. 121] A. Yes.

Q. On People's Number Six; is that the area where you have marked "S"—that looks like an "S-2"?

A. Yes.

Q. Directing your attention to shortly after the burglary, August 17, did you receive a phone call from Mr. Chimel after the burglary?

A. August 17?

Q. Yes.

A. I don't know the exact day, but it was a few days after the burglary.

Q. Few days after August 15 you received a phone call?

A. Right.

Q. Where did you receive the phone call? where were you at?

A. I was in bed.

Q. Was this at home?

A. Yes.

Q. Did you answer the phone?

A. I am almost positive I did. We have about six phones in the house, but I am sure that I answered it.

Q. And did you recognize Mr. Chimel's voice?

A. Yes, I did.

Q. You have heard it before?

A. Yes.

Q. What did Mr. Chimel say to you and what did you say [Tr. 122] to him?

A. Well, he asked me when he first called, of course, he says, "I heard you got robbed.". And wait—it's so long ago, it's so hard to remember, because I don't write any of this stuff down.

He called me, he says, "I heard you got robbed." I told him, "Yes, I did." And he says to the words that, "Well, I see you knocked your place over." Meaning me. And I says, "What are you talking about?" And then, of course, he repeated it again. He says, "I see you knocked your own place over to collect the insurance money." And, of course, I kind of led him on, and I told him at the time that I thought it was a very sloppy job, whoever broke in.

And he seemed very irritated of it, that—in fact, he kind of halfway seemed violent.

Mr. Monroe: I will object to what the witness assumed over the telephone.

The Court: All right. Just state what he said rather than what he seemed.

The Witness: He said in stammering words that, "No," that he heard it was real professional, you know, stammering and excited. And I said no, that it was very bad job that had been done. And then I asked him at that time, I said, "Ted, did you do the job?" And he says, "Why, no," he says, "I didn't do it."

And that's about all I can remember of that conversation.

[Tr. 123] By Mr. Enright:

Q. Did he indicate that the person—anything along the lines that the person may have done you a favor?

Mr. Monroe: Leading and suggestive, Your Honor.

The Court: Sustained.

The Witness: This——

Mr. Enright: Well,——

The Court: No question pending.

The Witness: Oh.

By Mr. Enright:

Q. Do you remember any more conversation along those lines?

A. There was another conversation that——

Mr. Monroe: Well, I will object to evidence of any other conversation without foundation.

The Court: All right.

By Mr. Enright:

Q. Was there another conversation?

A. Yes, there was, approximately I would say maybe a week after that one.

Q. Was this a telephone conversation?

A. Yes, yes, it was.

Q. And did Mr. Chimel call you?

A. No. This particular one, I called him for reasons being —that he was supposed to have—this was about the time—I may have my dates mixed up here—this is about the time that he appeared at the police department.

Mr. Monroe: There is no question pending.

[Tr. 124] By Mr. Enright:

Q. In any event, you called him?

A. Yes, I called him.

Q. You had been in touch with him?

A. For various reasons.

Q. You had been in touch with the police department; is that right?

A. Yes.

Q. All right. What was the conversation?

A. Well, the conversation was that I had asked him, "You had promised at the police department to bring the coins back, and why weren't they back?" Because at this time it was killing us because he had—half of our inventory, or three-quarters of our inventory was gone, was missing, and, of course, I was getting very anxious to get something done.

And so I called him up, and of course, kidded him about the—I had thought that he was going to bring them back, and I asked him why. And he just evaded all my questions. In other words, just kind of a numb sensation. And so then he told me, he said, "Did you ever think someone was trying to help you instead of hurt you by not cleaning you out completely?"

And I says, I think—well, in fact, I know I made the comment to him that I don't know how much better job they could have done as far as cleaning me out. And that was about the end of the conversation. He talked like he didn't know what I was talking about when I was asking him to bring [Tr. 125] the coins back. This was following the meeting at the police department.

The Court: Counsel, and Members of the Jury, we will take ten minutes at this time. Some time between 25 after and 3:30.

(Afternoon recess.)

The Court: Stipulate the members of the Jury are all present and in the box?

Mr. Monroe: So stipulated.

Mr. Enright: So stipulated.

The Court: Proceed.

By Mr. Enright:

Q. Mr. Slocum, directing your attention to January 25, 1966, did you have occasion to travel to Melvin Shapiro's house?

A. It was his business.

Q. His business?

A. Yes.

Q. Do you know a Melvin Shapiro?

A. Yes.

Q. Is he active in this business?

A. Yes.

Q. Is he active as a collector or a trader, if that's the right term?

A. Dealer, yes.

Q. Dealer, yes. Did you when you went to his place of business, did you go with anybody?

[Tr. 126] A. Yes. I went with Mr. Don Burton of the District Attorney's office.

Q. And did you have occasion to examine some coins up at this business?

A. Yes, we did.

Q. Was in fact one or two coins turned over to Mr. Burton in your presence?

A. Yes.

Q. Was one of these coins an 1877-S Trade Dollar?

A. Yes, sir.

Q. Speaking once again on January 25, did you recognize this coin?

A. Yes, I did.

Q. And was this a coin that was involved in the August 15 burglary of your store?

A. Yes, it was.

Mr. Enright: Your Honor, may this be marked People's next For Identification?

The Court: It will be received. That will be Seven For Identification.

By Mr. Enright:

Q. And how did you recognize it, Mr. Slocum?

A. It had the particular marks on the back that I have

never seen before, and I have handled literally thousands of Trade Dollars. It was by itself. It was kind of a faulty one. [Tr. 127] Q. Do Trade Dollars have a particular marking that you can identify?

A. Yes, they do. The Chinese put particular chop marks on them. They call them chop marks, to check the silver content. Well, this particular one wasn't an authentic chop mark. It appears to me someone laid another silver dollar on the top of it where the knurled edge is, and maybe hit the dollar with it.

Q. Mr. Slocum, I show you People's Number Seven For Identification, and ask you to examine it. First of all, what is it?

A. It's a Trade Dollar, an 1877-S.

Q. And if you want to take it out of the cellophane and continue to examine it, go right head.

A. Yes.

Q. Will you look at it, and see if you can identify it?

A. Yes. This is the same one we had in our collection that we had to mark down the price of it because of it not being authentic chop marks, but just being damage to the coin, particular damage, which I have never seen before.

Q. And is this the same one that Mr. Shapiro had in his business and showed you on January 25, 1966?

A. Yes, it definitely is.

The Court: May I see it, please?

The Witness: Yes.

[Tr. 128] The Court: Thank you.

By Mr. Enright:

Q. And did you take that dollar with you? Did you leave Mr. Shapiro's place of business with the dollar?

A. Yes, we did.

Q. And did you turn that over to Mr. Burton in our office?

A. Yes, yes, I did.

Q. May I look at it and see if there's any other writing on it that maybe shouldn't be there? This printing that appears on the paper here, is this printing that you had on it?

A. No. This Mel Shapiro said he put that on.

Mr. Monroe: I will object to that, and ask the answer be stricken as Hearsay.

The Court: All right. Then "Mel Shapiro said he put that on there," will go out. Answer is, "No."

By Mr. Enright:

Q. Did you see Mr. Burton initial this? No, strike that. And I assume the $25 marking here was not on it either?

A. At what time?

Q. At the time that it was taken in the burglary?

A. No, it was not.

Q. Was it on it at the time that you saw it in Mr. Shapiro's?

A. Yes, it was.

[Tr. 129] Q. What do you call this that I have here attached to the cellophane, the paper?

A. It is kind of a documentary of the coin, telling the grade and everything of it.

Q. And this is the way you saw it in Mel Shapiro's with this information on it?

A. Yes, it is, exactly.

Mr. Enright: Your Honor, may this go into evidence as People's next in evidence? I believe we opened up a cellophane deal. Mr. Monroe, do you have any objection to it going in like this? or put another piece of tag on it, or what? It has been opened.

If Your Honor please, I believe we will just take our own identification, it is just a DA's identification tag, off, and place the identifieation on this and on the paper itself, and put it in the cellophane?

The Court: All right.

Mr. Enright: To be next in People's evidence.

The Court: It will be received in evidence as People's Number Seven.

Mr. Enright: I have nothing further.

The Court: Cross examine.

Cross-examination.

By Mr. Monroe:

Q. With reference, Mr. Slocum, to Exhibit Seven, I don't think that I understand what you mean by chop marks.

Would you be so good as to point out for the [Tr. 130] Jury what you mean by chop marks?

A. Well, you mean point out on this coin?

Q. On this coin, yes.

A. Well, there is no chop marks on this coin.

Q. I see. What markings on that coin did you find to be unusual?

A. The markings that's just above the head to the left of the eagle on the reverse of the coin.

Q. May I see it?

A. Four little marks.

Q. Do you refer to the four——

A. Yes.

Q. —how can they be described? half circles? Are they rough, half circular marks perhaps a thirty-second of an inch in diameter?

A. Right, yes.

Q. How do these markings vary from—strike that, if you will.

You mentioned that with Trade Dollars oftentimes the Chinese and other persons would apply chop marks. How do the markings on this coin vary from the legitimate chop marks to which you referred?

A. Well, on a regular chop mark that the Chinese put on, of course, for checking to see if it's pure silver, they have a definite design. The person's name is stamped right on it in Chinese, and it has a definite design to it. This [Tr. 131] here is not Chinese. It's just a mark made by some other person. It could have been a person not in the council that marks coins.

They could have just hit—looks like to me now—this is a supposition—that another coin was hit on the top of it to test it out.

Q. Well then, this is something that could have happened to a coin while it was in a bag; is that possible?

A. No, it's not a bag mark. Bag marks are just short dips in the metal. This here is a definite—someone definitely did it on purpose. In other words, you can't hit two coins together in a bag that hard to make this deep a definition in the metal. This had to be hammered in, the impression.

Q. How long have you been in the coin business?

A. In the business for about five, five and a half years.

Q. And were you collecting coins before you got into the business?

A. Yes, sir.

Q. For how long?

A. Since I was 11 years old.

Q. How old are you now?

A. Twenty-seven.

Q. During the period of five years that you have been in the coin business, you testified that you had handled [Tr. 132] thousands of Trade Dollars?

A. Yes, sir.

Q. Can you approximate how many thousands?

A. When I say thousands, I would imagine around 3500 to 4,000. I handle them by the rolls, not the single pieces.

Q. Are coins of this nature, Trade Dollars particularly, usually handled by the roll?

A. No, just your larger dealer would handle them by the roll and sell them out to the smaller dealers.

Q. How many Trade Dollars are in a normal roll?

A. Twenty.

Q. On August 14, 1965, approximately how many coins did you have in your shop for sale?

A. You mean how many pieces?

Q. Yes.

A. Single pieces. I would say roughly 20, 30,000 pieces.

Q. You have identified this coin, Exhibit Seven, as having been in your shop. Do I understand correctly that in January, five months after this loss, you are able to positively identify one piece out of 20 to 30,000?

A. Yes, sir.

Q. Incidentally, do you have your purchase records and inventories with you?

A. Yes, sir.

Q. Where are they?

[Tr. 133] A. They are down in the DA's office.

Q. Weren't they Subpenaed to be here?

A. Mr. Enright—Mr. Enright's office.

Q. Can you get them up here?

Mr. Enright: I was hoping he would have to carry them up. They are rather large quantity.

The Witness: Pretty heavy.

The Court: Well, we will take a recess while Mr. Enright

and Mr. Monroe go and get the coins.

Mr. Monroe: Well, I will be happy to have assistance, Your Honor.

The Court: If you can delay bringing them up until morning, why, then possibly we can get some other husky gentleman to help you.

Mr. Enright: I was just suggesting, Your Honor, that there's quite a few documents there, and maybe Mr. Monroe would want some more time to look at them. It's just bulky, just a pile of documents.

The Court: Unfortunately there is no elevator in this building, so——

Mr. Enright: They are in my office as a matter of convenience.

Mr. Monroe: Well, Your Honor, I wonder if we might take five minutes. As long as we are into the Cross Examination of this witness, why, this is certainly the point where they would become necessary.

[Tr. 134] The Court: If there's something we could do until we adjourn, then you and Mr. Enright could look at your leisure? Is there any way we could fill in the rest of the afternoon? If you can't——

Mr. Monroe: Well, Your Honor, I think we can agree to defer further Cross Examination of Mr. Slocum. Mr. Enright indicates he has another witness he can go ahead with.

The Court: All right. We will defer further examination and Cross Examination of Mr. Slocum until tomorrow morning at 9:30.

Mr. Enright: Is Mr. Slocum excused now, Your Honor?

The Court: He may be excused for the rest of the afternoon, if you care to go. Be back tomorrow morning at 9:30.

Mr. Enright: People call Mr. Del Coma.

THOMAS H. DEL COMA, produced as a witness on behalf of the People, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Enright:

Q. Mr. Del Coma, could I have your full name and occu-

pation? You gave us your name. Could I have your occupation?

A. I am employed by the City of Orange as a police officer, assigned to the Investigation Division.

Q. Were you so employed on the morning of August 15, 1965?

A. Yes, I was.

[Tr. 135] Q. Did you have occasion to go to a premises known as the Money Vault?

A. Yes, I did.

Q. At 153 North Glassell, Orange?

A. That's correct.

Q. Were you in charge of an investigation that was going on there?

A. Yes, I was.

Q. What, if anything, did you observe when you arrived there?

A. I was called to the scene after the area patrol officer had discovered a burglary scene. Our crime scene officers and myself proceeded to the victim business in order to——

Mr. Monroe: I will object to the use of the word "victim" or "crime scene".

The Court: All right. You use 153 North Glassell, or whatever it was.

The Witness: We arrived at 153 North Glassell in the City of Orange.

By Mr. Enright:

Q. What did you observe when you arrived there, Officer?

A. I was shown into the business known as the Money Vault by the patrol officer, shown various coins on the floor behind the counters; was taken into the rear portion of the business, shown a hole through the drywall, and I exited [Tr. 136] from the Money Vault.

We entered into the shoe store, proceeded back to the storeroom area, discovered the second break in the wall of the shoe store storeroom. After examining that hole, we proceeded to the east end of the building, which faces on to a

community alley, and there checked an exterior panel door that had a hasp attached to it.

At the time I observed it, it was not locked, had been closed by the patrol officer.

Q. Was the lock still on the door?

A. No, it was not.

Q. Did you have an opinion of how the entry was made on the rear door?

Mr. Monroe: Object to the question. This witness is not qualified to express an opinion.

The Court: By that you mean the rear door to the——

Mr. Enright: This chart hasn't been marked yet, but the point of entry into the rear of the establishment. (Indicating.)

The Court: Restate the question, please.

Mr. Enright: I was asking Detective Del Coma if he has an opinion how the entry was made through that door.

Mr. Monroe: This obviously calls for an opinion. There's been no qualification.

The Court: Overruled.

By Mr. Enright:

Q. Do you have an opinion how the entry was made through the rear door?

[Tr. 137] A. There were impressions in the wood surface. At that particular time we were unable to determine a tool or any type of force related to a specific type of instrument.

The padlock was nowhere to be found right in the immediate area at that time.

Q. The door had been—there had been a hasp or a padlock; is that correct?

A. That is correct.

Q. The padlock was missing?

A. Yes, it was.

Q. And you did notice pry marks; is that right?

A. This is correct.

Q. Now, Officer Del Coma, I—I wonder if Your Honor—counsel and I have both looked at this—I wonder if it might be deemed marked for identification purposes

and I can direct Officer Del Coma's attention to People's next in order for identification purposes?

The Court: All right. It will be Number Eight, For Identification.

By Mr. Enright:

Q. Officer Del Coma, will you look at People's Number Eight, and see if you can identify it?

A. Yes, I can.

Q. What is it?

A. It is a hand-drawn drawing of the victim business and related building.

Q. Was this drawing done at your request?

[Tr. 138] A. It was done at my request and at request of the District Attorney's investigator, assigned to this case.

Q. Will you go to the blackboard and with a red crayon indicate a "D-1" where you observed the door that had the padlock missing?

The Court: Make that rather large so the Jury can see it, Officer.

The Witness: (Witness indicated.)

By Mr. Enright:

Q. Officer Del Coma, you might stand up there, if you would.

Did you have occasion to notice what type of door that was? what it was made out of? what is appeared to be?

A. It was a common exterior type panel door without the benefit of a standard door knob.

Q. Would you describe it as a heavy door or a light material?

A. A hollow-core plywood panel door.

Q. Such as one might have in his home between a bedroom and a living room?

A. That's correct.

Q. Now, marking "D-2" will you show us where you observed the first hole that you did observe between the walls?

A. (Witness indicated.)

Q. And this hole was between what premises there?

A. The first hole that I observed at the victim [Tr. 139]

business was from the back storage area into the shoe storage area.

Q. And could you tell—would you need to refresh your recollection looking at the picture—could you tell which way the break took place?

A. The debris——

Mr. Monroe: I will object to the form of the question. The witness has not been qualified to express any opinion on matters of construction or breaking of holes. If he is qualified as an expert, fine.

Mr. Enright: I think we can look at the picture, Your Honor. I don't know if it needs that much of an expert opinion.

The Court: All right. Show him the picture.

By Mr. Enright:

Q. Officer Del Coma, will you look at People's Number Five For Identification purposes?

A. Yes.

Q. Where was the plaster that's lying on the floor there in front of the hole? in which office are we seeing now?

A. We are seeing the back wall of what would be deemed the storage area of the victim business.

Q. And the plaster was lying on the inside of the back wall there?

A. The debris was laying on the floor inside the Money Vault's walled-in premises.

[Tr. 140] Q. Where did you see the second hole, Officer?

A. From this point inside the Money Vault we could view the second hole. We gained entrance to the shoe store, made entry into the storeroom area. There was scattered shoe boxes on the floor in the general area of this particular hole in the wall. There was debris laying on the shelving, on the inside of the storage room.

Q. Shoe boxes were inside the shoe storage room; is that correct?

A. That's correct.

Q. Now, will you mark a "D-3" there, please, Officer?

A. (Witness indicated.)

Mr. Enright: May this be marked as People's next in evidence, Your Honor?

The Court: All right.

Mr. Enright: Next For Identification, I'm sorry.

The Court: All right. That will be Number Nine, picture.

By Mr. Enright:

Q. While we are waiting, Mr. Del Coma, I show you People's For Identification Number Six, and there appears to be a yellow circle underneath the counter. Do you know how that circle got there?

A. Yes, sir. I put it there.

Q. What is the significance of that circle?

A. On our evidence photos, presenting them with our cases to the District Attorney's office for the benefit of [Tr. 141] the District Attorney's investigators and the attorneys handling the case, it's merely a highlighting as to where there might be some confusion as to a general area.

Q. Now, I show you People's Number Nine. What is this?

A. This is the east wall indicated by "D-3" on the drawing, of the general area of the break-through in the wall. At this time the shoe boxes had been replaced back on the shelves, and showing merely that this was the general area where the break-through had come through the debris. There is still some debris in the photo.

Q. This is taken from inside the shoe storage area; is that right?

A. This is taken from inside the shoe storage area, shooting in an easterly direction.

Q. This also has a yellow area marked out. What is the significance, if any, of that yellow area?

A. It is merely to highlight the general area in the wall and the shelf construction where the break-through was made.

Mr. Enright: Your Honor, may this go in evidence as People's next in evidence?

The Court: That's Nine?

Mr. Enright: That's People's Nine.

The Court: All right. Picture Number Nine For Identification will be received in evidence as People's Number Nine.

[Tr. 142] Mr. Enright: You may inquire.

Mr. Monroe: Thank you.

Cross-examination.

By Mr. Monroe:

Q. You may resume the stand, if you wish, Officer. I have something to lean on. (Indicating lectern.)

May I take one of these photographs, Your Honor? I don't know which.

The Court: Take all of them, if you want, but bring them back when you are through.

Mr. Monroe: I have one. Thank you, Your Honor.

By Mr. Monroe:

Q. Referring, Officer Del Coma, to People's Exhibit Five, can you tell me who took that picture?

A. This picture was taken by Investigator Raymond Eugene Staton of the Orange Police Department.

Q. Do you know when it was taken?

A. Yes, I do. It was taken the morning of this situation at this particular business.

Q. That would be August 15?

A. Yes.

Q. Referring to People's Nine, do you know by whom that picture was taken?

A. This picture was also taken by Investigator Staton.

Q. And do you know when it was taken?

A. This was taken after the initial situation transpired at this particular business. There was evidently a faulty problem with his camera the morning that he shot [Tr. 143] his complete series.

Q. Well, do I understand from your testimony, Officer, that pictures in the D-3 area, in the shoe storage area, were taken on the morning of August 15?

A. This is correct.

Q. But this is not one of them?

A. This is not one of them, no.

Q. Now, you saw some debris inside the coin shop near this hole which you have testified?

A. This is correct.

Q. Did you see any debris over here? (Indicating.)

A. There was a small amount of debris on the shelf side, yes.

Q. I see. There was debris on both sides?

A. Yes.

Q. Now, isn't it a fact that with debris on both sides you can't tell whether somebody went through this direction or this direction, can you? (Indicating.)

A. You probably couldn't say concretely, no.

Q. I see. Anything you said would be more or less a guess, wouldn't it?

A. Well, I can only answer that based on my experiences in burglary investigation.

Q. And the same situation as to this hole here, referring now to D-3, People's Eight For Identification?

A. The majority of the debris on D-3 was on the shelf [Tr. 144] area inside the storage room.

Q. But there was debris on the TV storage area side too?

A. Very little in comparison.

Q. Is this opening, referring to D-2 of People's Eight For Identification, is this opening visible from the front of the shop?

A. No, it is not.

Q. I notice on the drawing that there is some short distance west of D-2 what appears to be a partition. What sort of a structure is represented by that?

A. It's a partial wall.

Q. Is there a door or any other type of opening on the north side of that first wall?

A. It's a passageway opening. There's no door installed, or wasn't at that time.

Q. And I see the same markings here, a second, what appears to be a partial wall. Is that what this marking represents? (Indicating.)

A. That is correct.

Q. And was there a door or any other type of barricade there?

A. None whatsoever on that date.

Q. Now, in examining these premises did you notice any burglar alarm devices of any sort?

A. Yes, I did.

[Tr. 145] Q. What did you observe in that respect?

A. The front windows of this business were taped in a manner that burglar systems are installed, as was the front door. At the east end of the customer counter area there was a trip wire.

Q. That would be——. Well, if you would, Officer, could you mark that, the location of that trip wire on the chart, and label it "T"?

The Court: Everything he has let's keep D, make it D-4.
Mr. Monroe: All right.
The Witness: (Witness indicated.)

By Mr. Monroe:

Q. Thank you.
What is a trip wire, Officer?
A. A trip wire is an installation that the alarm companies use generally found two or three or four inches off the ground, or off the floor in a business. It's wired electrically to where, let's say, in the evening when you close down your business prior to exiting from the business you would attach your trip wires.

Any time after you set your alarm system anyone breaking the contact on that trip wire, possibly by unauthorized persons being in your business, stumbling across this sufficiently enough to break the contact, it would either set off an audible alarm on the exterior of the building, or in this particular case with a silent alarm the alarm would go [Tr. 146] to either the police department or the alarm company.

Q. Would it be correct to say that this is just what the name implies? It's something which is designed to trip a person, not as such, but in normal walking it is designed to catch on the feet or the ankles and therefore trigger an electric alarm?
A. Through normal walking pace, yes.
Q. Now, did you examine this particular trip wire, D-4, on August 15?
A. Yes, I did.
Q. And will you describe the condition of it?
A. Next to the contact point on the north wall there was evidence that some of the insulation had been pulled free on the actual electrical wiring.
Q. Now, what evidence was there that this insulation had been pulled free?
A. Well, the internal wiring was still very coppery colored; it wasn't corroded; it wasn't covered with dust.

My partner stumbled over it after we had been there for a while.

Q. Now, can you describe in more detail what sort of a device was on the north wall at the time you examined it?

A. This is the exact point. You have a stationary point that your trip alarm attaches to.

Q. Well, is this in the nature of some sort of electrical switch?

[Tr. 147] A. Yes.

Q. And how is it supposed to operate? Is it like an, oh, for example, the type of switch that you would pull for a light chain?

A. No. It's very similar to many variations of the same type of alarm where you have two points, and as long as you don't have the continuity running between the two points it's going to set off the alarm, but by attaching your trip clip to it you are completing the continuity of the two points through the—well, an electrical clip or an alligator clip type of attachment that when that is pulled free from the contacts and breaks the continuity, the alarm goes off.

Q. In order to see that I understand what you are describing, hopefully that everyone else will, I want to attempt from what you have just testified to to construct this schematically in the hopes that it can be more clearly represented, and don't hesitate to stop me at any time if I get off base here.

I will draw a contact going into the electrical system and then another contact capable of meeting that. Now, am I correct in assuming that the trip wire, if you take this horizontal line across the top of the blackboard here to be the trip wire, is attached to one contact, which if the trip wire is broken or pulled, this would free this contact, thus opening the circuit? (Indicating.)

[Tr. 148] A. I have seen them installed both ways.

Q. By "both ways" do you mean that——

A. With a positive contact and a negative contact.

Q. I see. Where contacting the trip wire makes the circuit?

A. Right.

Q. But at any event, one way or the other they are all similar in that a contact with a trip wire will, depending on the particular device, either make a circuit which was up to

that time open, or break a circuit which was up to that time closed?

A. Right.

Q. Which type was this particular one? Was it a normally open circuit or a normally closed?

A. To the best of my recollection at this time, not having seen it, except once since the original situation, the contact circuit was closed with a clip. The end of your trip wire is attached to the cabinet so as not to break loose there, and any contact with it would pull the clip off and open the circuit.

Q. I see. Then that system would follow this schematic diagram. With a trip wire attached the circuit is closed, and then opening the circuit sets off the alarm?

A. Right.

Q. Now, you observed the wires which came into this—for lack of a better term, I will call it the switch box—[Tr. 149] the whatever device houses these contacts?

A. Uh huh.

Q. You observed the wires coming in there as lacking some insulation; is that correct?

A. Right.

Q. And how much insulation was gone?

A. Well now, you are using the term "gone". It wasn't gone. It appeared that there had been pressure put against it, possibly through the trip line, and hadn't sufficiently broken the contact to where the wires were bare of insulation in a very small area.

Q. Well now, these are the wires that come into this switching device, were they not?

A. This is right.

Q. At the switching device itself, did it appear to have been pulled away from the wall, or be dislodged in any way?

A. It didn't appear to be in its original position, as though it had been stumbled against, or something had banged it to where it had bent it out from its original position.

Q. How were you able to determine this? Were there markings or something or other which led you to determine its original position?

A. Concretely I could not determine the original position, but due to the insulation on the wires, and the [Tr. 150] angle that these contacts were set at at the time I observed

them, it appeared that they had been moved from what would have been a normal position.

Q. Now, the trip wire itself, how heavy was this wire?

A. I couldn't begin to guess. Most generally you are using the term "trip wire" as I do, and actually quite often this trip wire is a fabric string of rather stout consistency.

Q. And in normal operation is this trip wire designed to pull this switch, or is it designed to break, thus freeing the contact?

A. To break the contact.

Q. It's a string or wire which is designed to break?

A. No. Now you are either confusing me, or I am confusing you. The whole idea of the trip wire, or trip string, or whatever other name you'd like to call it, when you strike this through normal stride or somebody crawling along, attempting to avoid detection would make contact with this string, or wire, which is generally black or a dark color that won't show up, once you strike this at the contact points it will pull loose and send out the signal.

Q. Well then, the trip wire is intended upon contact to pull loose here?

A. Right, right.

Q. Right. And in this case the trip wire had not pulled loose?

[Tr. 151] A. It was still in that position when I arrived, and on questioning the reporting officer it was in the same condition at the time he had discovered the situation at the Money Vault.

Q. Do you recall the lighting which you found in the coin shop on August 15?

A. To the best of my recollection, there was a night light on in the forward portion of the shop. I would say more towards the back end of the service counter, what I would deem the customer service counter, in that general area. I can't be specific as to what type of light it was.

Q. I see. Did you notice any lighting in this intermediate —I guess this is an intermediate storage area or opening here? (Indicating.)

A. Right, there was a teletype machine set up in that area.

Q. Did you notice any lighting in that room?

A. There was no lighting in that portion.

Q. Did you notice any lighting in this rear-most portion?

A. I don't recall seeing any lighting in either of the two portions.

Q. Did you notice any lighting in the shoe storage room?

A. Yes. At the time I was there, which was after seven o'clock in the morning, of course it was daylight, [Tr. 152] and there is a skylight up over that particular area.

Q. I see. Is there a skylight in the coin shop?

A. No.

Q. Did you notice any lighting in the TV storage room?

A. No, not that I recall.

Q. Let us go back, Officer, to the wires in connection with the trip wire.

I believe you testified that some insulation had been pulled back or stripped back, that the insulation appeared to be—appeared to have been tampered with in some way; is that a fair restatement?

A. I don't feel that I can say that it had been tampered with. It looked like it was in other than normal condition.

Q. Well, why did you feel that it was other than normal?

A. Well, there, again, I can only go back on my background of burglary investigation, and with examining alarm systems installed by various companies, and I don't ever recall seeing any of them install alarm systems with bare wires other than at a particular contact point.

Q. Well then, how much bare wire was visible?

A. I would estimate probably a thirty-second or a sixteenth, enough to, on examining the unit, that it was readily visible.

Q. But would it be fair to say not over a sixteenth [Tr. 153] of an inch along the length of the insulated wire?

Q. Well now, we are not talking about the length, we are talking about near the contact area.

Q. But what I am getting at is: In a longitudinal direction, longitudinal to the wire itself, approximately a sixteenth of an inch?

A. Yes, that's correct.

Q. Had you ever examined this particular alarm system before this occasion?

A. No, I had not.

Q. I notice the chart here is marked "POE". What does that stand for, Officer?

A. That is an abbreviation for point of entry.

Q. And that could just as well stand for point of exit, couldn't it?

A. It could be interpreted that way, yes.

Mr. Monroe: Thank you.

Redirect examination.

By Mr. Enright:

Q. When you directed the chart to be prepared were you interested in the point of exit?

A. Not as pointedly as we were as to the point of entry.

Q. And it's quite possible that point of exit and point of entry are the same, one and the same?

A. Could very well be.

Q. Do various wire systems, alarm systems, do various [Tr. 154] companies put out different alarm systems?

A. Yes, they do.

Q. And is the trip wire device a rather common device?

A. I wouldn't say it is as common now as it has been in the past; because of the advent of electronic devices and this type of thing, people seem to be going more towards the modern, up-to-date methods of alarm.

Q. And now, this wire damage that you saw was next to the point of contact; is that correct?

A. Yes.

Q. As if there was some pressure applied to the trip wire?

A. That was my own feeling, yes.

Q. As a burglary detective do you find that burglars that we occasionally catch have a habit of looking for trip wires?

Mr. Monroe: I will object, Your Honor, as to the habits of burglars, or occasionally caught, or whatever the question was.

The Court: Sustained.

By Mr. Enright:

Q. You have never heard of any burglars casually tripping in and out of places, though?

Mr. Monroe: Same objection.

The Court: Same ruling.

Mr. Enright: Your Honor, may we put People's Number

Eight—I don't think it has been in evidence—may I make [Tr. 155] the motion now to put it into evidence?

The Court: All right. It will be received in evidence as People's Number Eight.

By Mr. Enright:

Q. Now, in looking at this picture here, picture of the hole, People's ID Number Five, I don't mean to be facetious in looking at that picture, Officer, but do you have an opinion as a detective which way that wall was broken?

Mr. Monroe: The witness hasn't been qualified as an expert, Your Honor, and objection is offered on that basis.

The Court: Oh, I think a burglary investigator of a police department would be qualified.

Mr. Monroe: He might have started a week before this case.

The Court: Beg your pardon?

Mr. Monroe: He might have started a week before this case.

The Court: Well, I know differently, so——

The Witness: On viewing the photograph as at the scene the morning of the incident at the Money Vault, the physical evidence at the scene indicated that the entry in force was brought to bear from the east side of the wall.

By Mr. Enright:

Q. Into the——

A. Into the Money Vault business.

Mr. Enright: Nothing further at this point, Your Honor. I intend to recall Detective Del Coma at a later point.

[Tr. 156] Recross examination.

By Mr. Monroe:

Q. Officer, the opinion you have just expressed, based on force exerted against the wall, now, if a person, turning to either D-2 or D-3, had exerted a force on this wall, pulling the debris toward himself, the markings would have been the same, wouldn't they?

A. This could very well be, but indicated he——

Q. Fine, you have answered the question. Thank you.

Mr. Monroe: No further questions.

Redirect examination.

By Mr. Enright:

Q. Did you find any block and tackle over here in connection with this hole?

A. No, I did not.

Mr. Enright: Nothing further.

The Court: I think we will—you may step down. I think we will recess until 9:30 tomorrow morning, Members of the Jury. In the meantime, please bear in mind the previous admonition of the Court in reference to your conduct.

A Member of the Jury: What about our notes?

The Court: Just put them on your seat. Put them under the cushion, if you want to.

[Tr. 157] Santa Ana, California—Thursday, July 7, 1966

(James G. Enright, Assistant District Attorney, appeared as counsel for the People.)

(Keith C. Monroe, Attorney at Law, appeared as counsel for the Defendant.)

(Honorable David D. French, Judge Presiding.)

(William R. Macauley, C.S.R., Official Court Reporter.)

The Court: Let the record show that the Members of the Jury are all present and in the box, and also that Mr. Enright, District Attorney, is present, and Mr, Monroe, attorney for the Defendant is present.

Members of the Jury: We have medical information to the effect that Mr. Chimel is sick and will not be able to be here this morning.

Now, we would not continue the case—I can assure you Mr. Enright here would not continue the case, consent to the continuance, unless he were satisfied in his own mind that Mr. Chimel is sick, and we did not know anything about it until this morning.

Now, we are going to continue the matter until tomorrow morning at 9:30.

Mr. Enright: Your Honor, I wonder if, as a matter of jurisdiction, if we couldn't issue a Bench Warrant and hold it until tomorrow morning at 9:30?

[Tr. 158] Mr. Monroe: No objection.

The Court: Issue a Bench Warrant for Mr. Chimel, $5,000 on the Bench Warrant, hold it until tomorrow morning at 9:30, and will the Jury please return at that time?

I am very sorry that we caused you the bother of coming in. If it will make you feel any better, why, it disrupts my calendar too, but we will see you tomorrow morning at 9:30.

Mr. Monroe: Your Honor, for the sake of the record, it is a mere legal technicality to issue a Bench Warrant under these conditions, is it not?

The Court: Yes, that's correct. The issuing of the Bench Warrant, just disregard that insofar as Mr. Chimel is concerned, because that's legal technicality. I won't bother to go into an explanation of it.

All right, tomorrow morning at 9:30.

[Tr. 159] Santa Ana, California—Friday, July 8, 1966

(James G. Enright, Assistant District Attorney, appeared as counsel for the People.

(Keith C. Monroe, Attorney at Law, appeared as counsel for the Defendant.)

(Honorable David D. French, Judge Presiding.)

(William R. Macauley, C.S.R., Official Court Reporter.)

The Court: Good morning, Members of the Jury. Court will note the members of the Jury are all present and in the box. So stipulated, gentlemen?

Mr. Monroe: So stipulated.

Mr. Enright: So stipulated, Your Honor.

The Court: Proceed.

Mr. Enright: I believe Mr. Slocum now could resume the witness stand for Cross Examination, Your Honor.

The Court: All right. Mr. Slocum.

Bert R. Slocum, produced as a witness on behalf of the People, having previously been duly sworn, resumed the stand for further

Cross-examination.

By Mr. Monroe:

Q. Mr. Slocum, you testified as to what a Type Coin is, and I am afraid that I didn't understand the explanation of that any too clearly. I wonder if we could go back into the, more or less the definition of a Type Coin? What is a Type Coin?

[Tr. 160] A. Well, it's one particular type of a series. Instead of collecting the whole series, a person collects one type of the series.

Q. Well then, let's see—for example, we are now seeing in circulation the 25-cent pieces, which are, I believe, pressed of a combination of copper and silver and other metals pretty recent issue. Would any one of these bi-metallic coins be a Type Coin?

A. Yes.

Q. And referring to an individual Type Coin, it wouldn't

make—am I correct in assuming that it wouldn't make any difference what the particular year or what the particular mint was?

A. That's true.

Q. Therefore, when we refer to a Type Coin, we are referring to a particular design rather than any year series of any mint series; isn't that correct?

A. Yes. It's one out of a series of all. You can pick any date or mint mark you want.

Q. Now, from that does it follow that when you refer to a Type Coin you may well be referring to a valuable coin; you may well be referring to a coin which has no numismatic value of any significance above the face value?

A. This could be true, yes.

Q. Or, in other words, then when we say that Coin X, for example, is a Type Coin, this really tells us nothing [Tr. 161] about the value of that particular coin?

A. That's true.

Q. Now, you were served, were you not, on July first with a Subpena, requiring you to bring to court, among other things, inventories and records of claims, insurance claims made or settlements received for the Money Vault business covering the years 1964 and '65?

A. Yes, I was.

Q. And are these records which you brought in response to that Subpena? Would you like to take a look at them?

A. Yes, these are the records.

Q. And this Subpena also called for check stubs, general ledger and State Sales Tax Returns for the Money Vault?

A. Yes.

Q. Now, at the time you were served with Subpena on July first, isn't it a fact that you stated that these records were in New York?

A. That some records were in New York.

Q. What was your statement on it? Can you remember your words on that occasion?

A. Yes. The comment was that I had been Subpenaed ten minutes to five on Friday following the week end of the fourth of July, and that number one; I didn't have enough time to hardly get anything together, and I had sold one of my businesses out, and that some of these records were in [Tr. 162] New York, and that I would have to check with

the insurance company in L.A. also that might have some of my records.

Q. Well, Mr. Slocum, isn't it a fact that when you appeared in court on Tuesday morning you stated to Mr. Enright that you could not produce the records called for in the Subpena because they were at 110 Wall Street in New York?

A. No. I said that I couldn't produce all the records.

Q. And did you bring any records Tuesday?

A. The records that are down there were brought in Tuesday.

Q. Now, as a matter of fact, you brought those Wednesday, did you not?

A. Oh, you mean Tuesday morning when we first came here?

Q. Yes.

A. Yes, I brought the Income Tax Returns and all this dating back to 1961.

Q. All right. Now, in the records which you brought did you bring any records of any insurance claims made or settlements received?

A. Insurance claim, I would not have. The insurance company would have one. When I filed the claim with them they would have this claim, not me. The only thing I have is the policy which they gave me, which I have in there.

Q. I see. And you have then no record of any claims made or documents, copies of documents which you may have [Tr. 163] filed with your insurer for 1964 or '65?

A. Not that I know of. They can be easily obtained from the insurance company.

Q. Now, you made a claim against your insurer for the loss which you stated you suffered on or about August 14th of 1964, and what was the amount of this claim?

A. This I don't remember offhand.

Q. Well, let's go back to your insurance policy. Were you insured against loss of the coins which you stated were lost?

A. Did I what?

Q. Were you insured against loss, were you insured under a policy which would indemnify you for the loss of the coins which you stated were lost on August 14th?

A. Yes, I was.

Q. And what was the amount of insurance under that policy?

A. It was $10,000.

Q. And you in fact lost $24,000; is that correct?

A. Twenty-three thousand, some odd.

Q. But you do not remember what the amount of your claim was to the insurance company?

A. Well, no, because the coins that were taken, some of them were returned, and then they were supposed to return the rest of them, so we have made—if I remember right, two or three claims to them. It was not just one claim. The [Tr. 164] person that broke in brought back a certain amount of them to us.

Q. In terms of value, Mr. Slocum, do I understand that you are unable to now state how many coins are missing from that incident?

A. Right now, at the moment?

Q. Yes.

A. Yes, I am.

Q. Has your insurance company paid any claim to you?

A. Yes, they have.

Q. How much did they pay?

A. There is a record in there of $8500 paid.

Q. And as nearly as you can recall, when was that $8500 paid?

A. This I can't be sure of, but it seems like some time in December.

Q. That would be approximately December of '65?

A. Approximately.

Q. Was this $8500 even?

A. You mean to the penny?

Q. Yes.

A. Yes, it was $8500.

Q. Can you recall if this was, if this $8500 was more or less than you claimed?

A. No, it was less than I claimed?

Q. Do you know why it was less?

[Tr. 165] A. The reason—I remember at the time the reason it was less because I had just moved over to the new place and some of our receipts, they couldn't check out thoroughly, so they just made a $1500 reduction, as most insur-

ances do; you hardly ever get the full amount of the claim. The claim was for 10,000. We received 8500.

Q. Oh, now, are you testifying now that the claim you submitted to the company was for $10,000?

A. No, I mean the amount of the policy was 10,000.

Q. But you don't recall the amount of the claim?

A. No, I don't right now, no, because it changed three times, as I said before.

Q. But in any event, the claim would not have been more than $10,000, would it?

A. Oh, yes, definitely.

Q. It would have?

A. This is all the insurance I had, was $10,000.

Q. Had you recently changed that policy?

A. Yes, I had.

Q. What change had you made in it?

A. We, before I moved, when I was over in Fullerton I had a $50,000 policy in effect, and the new policy went into effect 7-22, I believe it was. No, it was 7-12, the $10,000 policy.

Q. So that you reduced the coverage by $40,000 in early July?

[Tr. 166] A. No, this was August.

Q. In August?

A. Oh, excuse me, you are right, in July, July the 12th.

Q. Is there anything which fixes that particular date in your memory, the date on which this policy was changed?

A. Yes, it does, because it is—I think it is the top one of my records there, and we were reading through it yesterday morning, and that's how I fixed the burglary, one month and two days after we moved in, because we moved in the day the policy was in effect, which was July the 12th.

Q. Where did you move from when you moved to the Glassell location in Orange, Mr. Slocum?

A. Moved from Fullerton.

Q. What address in Fullerton?

A. Seems like it was 150 North Raymond.

Q. And was this the same type of store, same type of shop in Fullerton as you had in Orange?

A. No. The building in Orange was quite a bit bigger and wider and newer.

Q. Well, perhaps my question was a little bit confusing. Essentially the same type of business?

A. Yes.

Q. Appealing to essentially the same type of clientele?

A. Yes, except also in Fullerton, though, that we had two businesses in one, whereas in Orange we only had one [Tr. 167] business.

Q. I see. What were the two businesses in Fullerton?

A. We owned a teletype circuit that goes throughout the United States for coin dealers. We had that also in the same business as our coin business in the front.

Q. Were you the sole owner in Fullerton?

A. Yes, I was. My wife and I.

Q. Did you have any employees there?

A. Yes, we did.

Q. Who were those employees?

A. Man named Claude Thomas, who had a coin shop over on South Main in Santa Ana, and also Lee Martin worked for us there, who was in Santa Ana also.

Q. How about Russell May?

A. Russell May never worked for us or anything. He helped out there. He gave us a loan when we first started to start the business.

Q. In Fullerton?

A. Yes, in Fullerton.

Q. I see. How much money did he loan you?

A. I think it was $1500, which we paid back in about two and a half, three months.

Q. During what period of time were you in business in Fullerton?

A. It was approximately a year. I think we moved in there right in January of that year, the following year moved [Tr. 168] out in July. I can't remember the dates. I am not positive on any of them. This is just approximate dates.

Q. As nearly as you can recall. I realize this is approximately two years ago now. Well then, as nearly as you can recall, you would have been in business in Fullerton from January, '64, to about July of '65—well, until July 12th of '65?

A. Approximately.

Q. Mr. Slocum, I have some documents here which came

from the box you have identified. I'd like you to look at those documents and see if they are part of the records which you produced in response to the Subpena which was served on July first.

A. Are these the records? Yes, these are the ones I brought in Wednesday.

Q. I see. Which part of it, what type of record is that, Mr. Slocum?

A. This is the bookkeeping for the Money Vault operation.

Q. These are the operating statements, are they not?

A. Yes, coins bought and sold and all that.

Q. Now, incidentally, are the documents contained in that blue folder which is before you, are the documents contained there all of the operating statements which you produced?

A. I don't understand. Which I produced?

[Tr. 169] Q. Which you brought to court?

A. Right here?

Q. Yes.

A. No, there's another one in there.

Q. There are other operating statements?

A. Yes. If you want to take them all out, I think, and dig down to the bottom, you will find some more.

Q. All right. The other operating statements which are in the box somewhere, do you know offhand what period of time they cover?

A. No, I don't. I just noticed on here what period of time this covered.

Q. And what——

A. See, I didn't do any bookkeeping. I had a bookkeeper that did it. In fact, my wife did most of all the check writing and everything. All I did was handle the business. So as far as this, I am looking at Greek when I look at this. I don't even know, you know, what I am looking at.

Q. Well, as nearly as you can determine, what period of time is covered by the records which are before you?

A. Right here?

Q. Yes.

A. Apparently July, '64 to February of '65, and then there is one December statement in here for '65.

Q. I see. And the period which is not covered by [Tr.

170] those records would then be from March through November of '65?

A. Right.

Q. You filed a Federal Income Tax Return for 1965, did you not?

A. No, I did not.

Q. You did not?

A. No, I did not. I haven't filed it yet.

Q. I see. Have you prepared one?

A. Yes, I have. It's down there in the box.

Q. Why hasn't it been filed, Mr. Slocum?

A. Well, there's many reasons. We sold our business out, and we were getting papers back and forth on that. We didn't close that until March. We just have been tied up. It's all ready to file now.

Q. The copy which you produced in response to the Subpena is the one which you will file?

A. Yes. It's all been filled out. we are just waiting for maybe one or two corrections to verify some advertisement expenses.

Q. And isn't it a fact, Mr. Slocum, that the Federal Income Tax Return which is prepared, and which you are going to file does not show any casualty loss?

A. There would not be any loss. The only thing it shows is an opening inventory and a closing inventory, and your loss is between your opening and closing. This is the [Tr. 171] way our bookkeeper set it up. I don't think he was trying to defraud anybody on it.

Q. Who is your bookkeeper?

A. Tom Hardman from Garden Grove.

Q. Were you engaged in business during 1961?

A. Excuse me. In '61?

Q. Yes.

A. We were not—we were actually at the time I was working. We were kind of doing these on the side, going through coins, like everyone gets started.

Q. Well, isn't it a fact that you were engaged in a part-time business in 1961?

A. I wouldn't call it a part-time business. When I said five and a half, five and half years yesterday, this means in dealing with coins—day before yesterday—whereas a dealer you don't have to be buying and selling.

Q. My question is not limited to coins. I only asked if you were engaged in a business in 1961.

A. In '61? Not that I can remember of. Wait. See, now you are throwing dates at me again, and I can't remember exactly the dates on it. I have a very poor memory.

Q. Is 1520 West Lincoln in Anaheim familiar to you?

A. This is—I worked behind this place.

Q. I see.

A. And I rented a little shop there to work on my race cars.

[Tr. 172] Q. And you filed a Federal Income Tax Return in 1961?

A. This I don't remember.

Q. You don't remember whether you filed a tax return in 1961 or not?

A. I don't remember if I filed one for 1520, or whatever it was, Lincoln.

Q. My question is only did you file a Federal Income Tax Return for 1961?

A. Well yes, we had to; we filed one every year.

Q. All right. And isn't it a fact, Mr. Slocum, that in that Federal Income Tax Return you claimed a casualty loss from burglary of $4320?

A. That's right.

Q. You didn't take this off of inventory?

A. What do you mean? Well, this is not the same person that was doing our books then as doing them now. This is some place in Fullerton that did them, and, of course, we were operating a business that I wouldn't even call it a business. I worked in the bank, and we had a place there with insurance on it to cover our stock which we had had in our chain of muffler shops in Riverside.

Q. Then you did have a loss at that time?

A. Yes, we did.

Q. And were you compensated by insurance for that loss?

A. Yes, we were.

[Tr. 173] Q. How much was the loss itself?

A. This happened five years ago. I can't remember this. I can barely remember last year's.

Q. How much were you compensated by insurance?

A. I don't remember this either. It should be there in front of you. I don't remember.

Q. Would it perhaps refresh your recollection to look at the copy of your income tax return which you have produced?

A. It wouldn't hurt it any, that's for sure.

Q. I hand you a document, Mr. Slocum, and ask you if that is a copy of your 1961 Federal Income Tax Return which was filed?

A. Yes, it is. What did you want to know?

Q. After looking at this return is your recollection refreshed as to the total amount of loss in the burglary shown in that return?

A. Yes. It says $4320.

Q. Does this help you at all in recalling the amount that you were compensated by insurance on this loss?

A. No, it doesn't, but I imagine—I think it took possibly a year or so to pay it off, and they must have paid off the same amount, because there wasn't any questions about it.

Q. Now, do I understand you correctly that having taken a year or so then any indemnification under that policy of loss insurance would probably have been paid to you during [Tr. 174] 1962?

A. This I don't know.

Q. Can you tell me this, Mr. Slocum: Can you recall that the actual loss in 1961 was $4,320, or could it have been more, total loss?

A. This I couldn't tell you. This is what it has down here, so this must be what the loss was. We are going back five years again.

Q. Sure. And if that was the total loss, and you were later compensated by insurance, since you have claimed this as a deduction, you would have reported the peyment from the insurance company as income later on; isn't that correct?

Mr. Enright: Your Honor, I will object to this line of questioning. We are not dealing with income tax returns here. I don't know which one of us in the courtroom wants an audit on income tax. Big question whether this is income or not. It has nothing to do with the burglary of a coin shop.

Mr. Monroe: I merely asked him if he did.

Mr. Enright: It is beyond the scope of the Direct, and it's immaterial.

The Court: Is it material?

Mr. Monroe: Yes, I think it is, Your Honor, and we will link this up very shortly.

Mr. Enright: I would like to approach the Bench and [Tr. 175] have an Offer of Proof. We are dealing with income tax returns—I don't know whether Mr. Monroe wants to go down and have an audit of his accounts. These are open questions before the Internal Revenue, whether insurance is income or not.

Mr. Monroe: All right. I will withdraw the question.

The Court: All right.

By Mr. Monroe:

Q. Let's go to 1962, Mr. Slocum. I think you testified that you were in the coin business for five years before the loss upon which this case is brought; is that correct?

A. That's what I testified, but by being in the business, like I say, I meant dealing with coins.

Q. Fine. You have answered the question.

Now, isn't it a fact that you were in the manufacturing business in 1962?

A. I have been in many businesses.

Q. Isn't it a fact, Mr. Slocum, that your Federal Income Tax Return filed in 1962 shows your principal business activity as manufacturing?

A. Could be many things. This I don't remember.

Q. I am not asking what it could be. I want to know what it is.

A. I don't know. You will have to show me. Like I say, I have been in many businesses in the last three years.

Mr. Enright: Your Honor, I object to the immateriality. [Tr. 176] It is immaterial and beyond the scope of the Direct Examination, and it's argumentative in the last question.

Mr. Monroe: It's impeachment, Your Honor.

The Court: I didn't understand him to say he was only in the coin business.

Mr. Monroe: Well, I would make an Offer of Proof, if counsel wishes.

The Court: I will sustain the objection.

Mr. Monroe: May we approach the Bench for an Offer of Proof. Your Honor?

The Court: No. I don't think so.

By Mr. Monroe:

Q. All right. Turning now, Mr. Slocum, to 1965, when you moved from your Fullerton location to the Orange location; did you—well, to put it in pretty plain terms—did you more or less pick up bag and baggage from the Fullerton location and just move everything over to Orange store?

A. Not all at once, no.

Q. But you did bring over your inventory, your stock in trade, perhaps over a period of time, to the Orange store?

A. Yes, eventually.

Q. So that in large measure the merchandise which you had in Orange would have been a good part of that which you had in Fullerton?

A. Not all of it, no, not most of it. Some of it went to the bank, whereas a lot more was going to the bank too, but [Tr. 177] I went to the hospital and couldn't get it in.

Q. What bank did it go to?

A. To the Independent Bank on Anaheim—on Lincoln in Anaheim.

Q. Did you maintain a depository of some sort there, a safe deposit box, or what sort of arrangement did you have?

A. We put in $2,500 face value worth of coins in the bank. Our safe deposit boxes are over in Orange at the First National Bank of Orange. In fact, the coins are still there today at the Independent Bank.

Q. Do you have any idea what the numismatic value of the coins which are at the Independent Bank is?

A. Well, there's, like I said, there's 2500 in face value.

Q. The numismatic value?

A. It's been so long, it's been almost a year since I put them in. I just can't remember how many is in there. I have a list filed at the Independent Bank, of course, of the coins that are in there, and the rolls—most of it are rolls. They aren't singles; they are just rolls of quarters and half dollars and dollars. There is no single old coins in there. I think the oldest coin may be 1932.

Q. Now, you reported a loss from the Fullerton store in February of 1965, did you not?

A. No, I did not.

Q. You did not report any loss to the Fullerton Police [Tr. 178] Department?

A. No, I did not, not that I know of.

Q. Not of $1175 worth of coins?

A. If we reported a loss, it was never turned into the insurance company, and we never received a penny on it. This I can't remember. The burglar alarm went off about every night over there. We had a faulty burglar alarm.

Q. Well, in order that we be very clear on this, Mr. Slocum, is it your testimony that you did not report a loss in February of 1965 from the Fullerton store, or is it your testimony that you can't remember?

A. It's my testimony that I can't remember reporting any loss, because I never got paid for any loss, or I never turned any loss into the insurance company. In other words, I can't remember reporting a loss like that, no, not in February of '65.

Q. At this period of time, February, 1965, Mr. May was associated with you in the teletype business; is that correct?

A. What do you mean when you say "associated"? I don't understand this.

Q. All right. Let me withdraw the question, and see if I can clear it up a little bit.

At this period of time was Mr. May an owner in any part of the teletype business?

A. Of our existing teletype business?

[Tr. 179] Q. Yes.

A. No, he was not.

Q. But I think you testified that he had loaned you some money, or invested some money; is that correct?

A. That's correct.

Q. And what was the arrangement there? Was this just simply a loan with no interest in the business, or did it entitle him to some interest in the business?

A. Well, the actual purpose of it was we were starting a new circuit. We already had our own circuits which we owned and he had nothing to do with, and we started a new circuit, and he put X amount of dollars, I believe, approxi-

mately 1500 or 2,000 in it, and within a month the going got rough, and he pulled out on us, and, of course, we paid him back in full within two and a half to three months, so that's the only way he was connected in that in any way whatsoever, but he had nothing to do with our other teletype business.

Q. Did he have access to the Fullerton store?

A. You mean a key? A key access or——

Q. Yes.

A. I don't remember. I don't think so.

Q. He was listed as a person to contact with the alarm service in the event of an alarm, was he not?

A. This I don't remember either. He was in for a month, and then he was out. It's hard to remember.

Q. Well, the month in which you refer to him as being [Tr. 180] in, as nearly as you can recall, when was this month?

A. I don't have any idea of when it was. It was the time he moved in before we moved out, within a six months' period. I think it was approximately two or three months after we moved in, but—I can't be sure on it.

Q. Now, when you were contacted by Officer Del Coma in regard to your loss at the Orange store on August 17, 1965, didn't you tell Officer Del Coma that you had previously had a hundred ten thousand dollars insurance, and had recently reduced it to 10,000?

A. This I don't remember. A hundred ten, no.

Q. Well, you did tell Officer Del Coma that you had reduced your insurance coverage shortly before moving to the—or shortly before moving into the Orange store, did you not?

A. Yes, I did.

Q. And did you tell him that you had so reduced it because of the high premium payments?

A. This is typical of coin dealers, yes, with insurance policies.

Q. In order that we are perfectly clear on this, Mr. Slocum, did you reduce the coverage or did the insurance company?

A. We reduced the coverage.

Q. You requested them to reduce the coverage?

A. That's right.

[Tr 181] Q. Did they refund any premium to you?

A. I think they just applied it on the new policy. I can't remember getting a check back.

Q. In the general area of this loss to which you have testified, and particularly the week before, the week preceding this loss, you testified that Mrs. Slocum was running another one of your businesses. What other business was she running?

A. Another one of our?

Q. Yes.

A. I don't understand. Another one of ours?

Q. Well, what business was she running at that time?

A. She was running our teletype business, I understand.

Q. I see. And that business was at that time and is now located at your home?

A. No, it's not.

Q. I see. Where is it located?

A. Well, it's right now, it's located at 16381 East Lincoln, and in a couple of weeks it will be across from the Angel Stadium.

Q. And where was it located on August 14th?

A. It was located in our home.

Q. Now, turning to calendar year 1964, Mr. Slocum, isn't it a fact that the Money Vault showed a substantial net loss for that year?

[Tr. 182] A. Yes. It has for the last two years.

Q. I see. And isn't it a fact that for the first six months of 1965 it showed a net loss?

A. This is true. This is because of the burglary.

Q. No, the first six months? That would be January first through June 30th?

A. Of '65?

Q. Yes.

A. I thought you meant '66. This is true because of our opening inventory, which we have 19,000, which, like most businesses, we don't take anything out, we just keep putting it back in. I think we started out with 12 or 1500 and two years built it up to 19,000 in inventory.

Q. Well now, Mr. Slocum, isn't it also a fact that 90 percent of your inventory was purchased in the first three months of operation, and that the level has not changed at

any time more than 25 percent from the level established at that time?

A. I don't understand what you mean.

Q. Let me rephrase the question. Let's go at it this way: Can you estimate what your inventory in the Money Vault was on January first, 1965, and if you have records here which would assist you in that——

A. At that time it was 19,000 some odd dollars, which was our opening inventory in 1965, which were—actually most of it was face value considered because we picked most [Tr. 183] of these coins out of circulation, whereas some of them may be listed in the 19,000, one dollar's worth of coins may be worth 500.

Q. You picked most of these coins out of circulation?

A. That's true. Not all of them, but most of them.

Q. Do you have any way of telling what your inventory was on June 30, 1965? If you have records which will assist you, by all means refer to them.

A. June 30th?

Q. Yes.

A. What our inventory was?

Q. Yes.

A. I don't have any idea. I imagine it would be about the same as it was the opening year because it didn't fluctuate that much.

Q. I see. So it remained generally level?

A. Well, in '65 our market dropped in '65, so we didn't have the action we had in '64, whereas I think some months we did 60, $70,000 worth of business in one month, whereas now the level is down. It's not—it hasn't been steady all through '64 and '65.

Q. And isn't it a fact, Mr. Slocum, that your inventory was approximately 19,000 in September of 1964?

A. Our inventory in '64 and the early parts of '65 when business was fairly good was about the same. We would buy what we would sell so we would maintain a practical [Tr. 184] level amount of coins that we would buy and sell.

Q. But in August of 1965 you had a $24,000 burglary loss?

A. Twenty-three, right.

Q. Which was approximately one-third of the coins you had in the shop?

A. That's right.

Q. What hospital did you go into on August eighth, Mr. Slocum?

A. I can't even remember what hospital it was.

Q. You don't recall the hospital?

A. I sure don't. I recall the bill, but not the hospital.

Q. What did they do for you there?

A. At the hospital? Well, they treated me for ulcers, G.I. Tests and all that.

Q. Did they operate?

A. No, they didn't operate. I still have an operation coming up in about three more months.

Q. When did you close the Orange store?

A. When did we close it?

Q. Yes.

A. We never did close it. It's still there.

Q. Well, it's vacant now, is it not?

A. No. My showcase and everything are still in it. It's not vacant.

[Tr. 185] Q. But there's no merchandise there?

A. Yes, there's merchandise in it.

Q. What?

A. Odds and ends, stuff that we didn't take over and put in the vault.

Q. How long has it been in this condition with odds and ends of things

A. Possibly two months, two and a half.

Q. Why are you holding it in that condition?

A. Well, because at the moment we are busy in our other business with the people that we work for, and we don't have enough time to spend full time with that.

Q. Do you intend to restock the store and open it to the public?

A. Do we?

Q. Yes.

A. Well, that's kind of impossible, because we are moving out of State, so—within another month or so, so we won't be restocking that store, no. We don't have much stock to restock it with at the moment anyhow.

Q. What was your inventory after the burglary?

A. I can't remember these figures.

Q. As nearly as you can recall?

A. It seemed like it was in the two or $3,000 figure in the shop.

Q. Then your total inventory immediately before this [Tr. 186] burglary was 26 to $27,000; is that correct?

A. Well now, where you are getting all confused here, there's two different types of inventories. There's coins that we pulled out at face value that some coins may be worth 30 to $50 per coin, and there's coins we bought. Our inventory we bought was up around $19,000.

Q. Let's back up, and when we speak of "inventory" let's speak in terms of numismatic value. If I address a question to you about inventory, I will be referring to numismatic value unless I specifically say otherwise. All right?

A. You can't clarify it that way, though.

Q. Well, why is that?

A. Well, because when you are talking numismatic value, when you go to pay your taxes with a half dollar, how much do they pay you for it, even if it's worth 200? They give you 50 cents for your taxes.

These halves and quarters we pull out of circulation were 25 cents and 50 cents, although they might be worth five to $50, so you can't intermix the two, and you can't say you have an inventory worth so much.

Q. What value do you insure for, Mr. Slocum?

A. We insure for a little over face value. You don't insure for the full numismatic value of the coin.

Q. What is this "little over face value"? How is the insurance value obtained?

[Tr. 187] A. Insurance value is obtained by yourself, not the insurance company, and you just figure out what it's going to cost you to replace the coin wholesale, not retail.

Q. Oh, well then, this is the wholesale numismatic value?

A. Yeah, it's not retail. It could be over face; it could be maybe double, triple, or it could be just a little bit like a $50 bag of pennies could be $55.

Q. All right. So you insure for the wholesale numismatic value.

Now, when we—when you speak of your inventory value are you speaking of the wholesale numismatic value?

A. No, I am speaking of the value that I paid for the coins, on your inventory. When you sell them—

Q. This would be the same thing, presumably, as your replacement cost; would it not?

A. No, it would not.

Q. Why wouldn't it?

A. Well, how can you put—like if you find a coin for a quarter and it's worth $50, how can you put $50 in your inventory? It's still only a quarter. You haven't paid $50 for the coin, so you can only put a quarter in your inventory.

Q. It is your testimony that the majority of your inventory came from coins in circulation?

A. I wouldn't say majority. I don't know the exact [Tr. 188] amount, but we went through from eight to $10,000 worth of coins per day.

Q. How much did you buy from other dealers? That is to say, did you buy a small amount of your inventory from other dealers? Did you buy the major portion from other dealers?

A. This I don't know. On good months we'd buy 60, 70,000. Of course, we'd sell that much too. Your margin of profit is very slim when you are working on the teletype.

Q. We have these records here, which they include a great many of your purchase records during that period of time, do they not?

A. Yes.

Q. And may I look at this record?

Mr. Slocum, I show you a document from the blue book, which you have already identified, and ask you if this is your operating statement for the Money Vault for the period ending February 28, 1965?

A. Yes.

Q. And can you determine from that statement what your total sales were for that month?

A. $20,862,18,950.

Q. Isn't that in the year to date column, Mr. Slocum?

A. Oh, I thought this was it. Total sales for that month was $11,114.

Q. Can you give the Jury a reasonable estimate of how [Tr. 189] much of that sum came from coins that you found in circulation?

A. No, I have no idea. This would be—unless I looked

through every one of my records and picked every one out and memorized which ones that I found that I had marked down, and which ones I didn't, it is an impossibility to give a figure.

Q. Well, we have the records here. Would it help you to answer the question to take a look at these records?

A. No. All it would do is confuse me. There's too many of them there.

Q. I see. Well now, you have the particular records for February, 1965, in a separate envelope, do you not?

A. Should have, yes.

Q. I hand you an envelope marked, "The Money Vault, Account Number 95, February, '65," and will you look at that and see if that is the record—the original records relating to that month?

A. I guess it is. It appears to be. But, like I say, I don't even handle these things so I don't really know.

Q. I see. Now, isn't it a fact—. Incidentally, on your operating statement, Mr. Slocum, do you show the amount of purchases for February, 1965? This would be purchases of inventory.

A. They must call it cost of sales. I don't find it. No purchase of inventory in here. Show me where it says [Tr. 190] "Purchase of Inventory".

Q. I invite your attention, Mr. Slocum, to the second page of the operating statement, and ask you if that is not a listing of checks issued and purchases made during February, 1965?

A. Yes, it is.

Q. And will you look down that list and tell the Jury if there are any purchases shown other than from coin dealers?

A. No; they are all coin dealers.

Q. So in that particular month almost all of your inventory came by direct purchase from other coin dealers; is that correct?

A. This is probably correct, mostly throughout '65. '64 is when actually the boom was in the coins. '65 everything kind of slowed down, so—. And this isn't our statements either for our mail order that we had. Most of the stuff was disposed of mail order, which you will find before February.

Q. Did you state to Officer Del Coma on August 17, 1965, that as a result of the loss of these coins you were losing 50 to a hundred dollars a day?

A. Yes, I probably did.

Q. This would be——

A. That would be a lot of money a week.

Q. Two to $3,000 a month, something like that?

[Tr. 191] A. That's right. Shows in the statement here where it was 2,000 that month.

Q. But that is after the coin market had slowed down?

A. I don't understand.

Q. You just testified that the coin market slowed down in 1965.

A. This is true. Common sense tells us when our inventory is gone we are not going to make the same amount of money we will make with it there. One of the reasons the doors are locked now.

Q. As a matter of fact, you weren't making any profit at all in 1964; you operated at a loss all year.

A. In '64 we built up inventory. We started out with one or 2,000 and built it to 19,000.

Q. And you operated at a loss all during 1965?

A. This has to be shown to me, because I see this month here in '65 was $2,000 gain in one month.

Q. You testified that you had a loss for the first six months, right?

A. This is what you said, and I agreed with you. I didn't have the records in front of me.

Q. I see.

A. I have them now. Anything you want to ask me I will verify it.

Q. I see; I see. Well, from your records how much money did you make during the first six months of 1965?

[Tr. 192] A. Well, in February it shows $1,928.

Q. Well, for the first six months?

Mr. Enright: Your Honor, may we approach the Bench?

The Court: Well, we will take our morning recess at this time. Ten minutes.

Members of the Jury, you may step down, if you care to.

(Recess taken.)

The Court: Stipulate the members of the Jury are all present and in the box?

Mr. Monroe: So stipulated, Your Honor.

The Court: Proceed.

By Mr. Monroe:

Q. Mr. Slocum, did you in the normal course of business conduct any inventories during 1965?

A. Yes, we took an inventory every once in a while.

Q. When was the last inventory taken before August 14, 1965?

A. This was at the time I moved in July.

Q. Do you have a record of that inventory?

A. I don't have it with me, no, but I have it at home.

Q. It was under Subpena, was it not?

A. Not that I know if, no.

Q. I hand you a document, and ask you if this was a Subpena which was served on you on July first, 1966?

A. Yes, it is, and also, if you notice on the checkmarks what you want me to bring, it's not checked.

Q. Well, you have answered my question. Does that [Tr. 193] document call for inventories for 1964, 1965?

A. No, there is no check by the inventories.

Q. Is inventory shown as an item which you are to produce?

A. It's written on here, but it's not checked for me to bring it.

Q. Who put the checkmarks on that Subpena, Mr. Slocum?

A. I don't know. I didn't.

Q. I see. But from the language of the Subpena it tells you to bring inventories?

Mr. Enright: That's argumentative, Your Honor. If he asked him to bring it this afternoon, he will bring it.

The Court: All right. Go home during the noon hour and get the inventory and bring it in.

By Mr. Monroe:

Q. And when—Let me withdraw that.

Did you take an inventory after August 15, 1965?

A. When you are referring to an inventory, it's—an inventory of the coins that were missing, yes.

Q. No, I mean did you take an inventory of the coins which were there?

A. No, we didn't.

Mr. Monroe: Your Honor, I wonder if I may defer further Cross Examination until this afternoon when the inventory is available?

The Court: All right.

Mr. Enright: May I Redirect at this point?

[Tr. 194] The Court: Yes, I think so.

Mr. Enright: To areas covered up to this point?

The Court: Yes.

Redirect examination.

By Mr. Enright:

Q. So, Mr. Slocum, when you moved from Fullerton to Orange in July of 1965 you took an inventory; is that correct?

A. Yes, we did.

Q. And after the burglary did you compare what was missing back to the inventory that you had in July?

A. I believe this is one of the ways we determined how much was missing.

Q. Did you also know what was in the area that is shown on one of the People's Exhibits right below the counter, what type of coins you had in there?

A. Yes, we did, definitely.

Q. Had you looked at those coins recently?

A. Yes, within about a week of the burglary.

Q. Now, back to this burglary of some auto equipment, when you were doing some work in automobiles, what type of work was this?

A. This was building of race cars.

Q. And you suffered a burglary; is that correct?

A. Yes, I did.

Q. Did you report it to the police?

A. Yes, I did.

[Tr. 195] Q. Do you know if anybody was arrested for the burglary?

A. Yes, there was.

Q. And was he prosecuted?

A. Yes, he was.

Q. Now, after the burglary that we are interested in here, the burglary of the Money Vault on August 15, did you contact the Anaheim Police Department?

A. (No response.)

Q. I know they were there when you arrived, but——

A. Orange Police Department.

Q. I'm sorry, Orange Police Department.

A. Yes.

Q. They were there when you arrived that morning?

A. Yes.

Q. Did you contact them after that?

A. Yes, I did.

Q. Did you call them on the phone?

A. Yes, I did.

Q. Did you go to the police department?

A. Yes, I did.

Q. How many times did you go to the police department?

A. Many, many times. I couldn't give you an exact number, but over ten, 15 times.

Q. And you indicated that there were several—there were a couple of changes in the list of coins that were [Tr. 196] ultimately missing on the list that you prepared for the insurance company; is that correct?

A. Yes, it is.

Q. Was this because some of these coins were returned to you through the police department?

A. Yes.

Q. Did Officer Del Coma present some coins for your inspection and examination?

A. Yes, he did.

Q. Was this a portion of the coins that were taken in the burglary?

A. Yes.

Q. When you were going to the police department did you have occasion to be present with Officer Del Coma when you were negotiating for the return of the coins with anyone?

A. Yes.

Q. Who were the persons that were negotiating for the return of the coins?

A. The people that burglarized the shop, which was Ted and Chuck Hamburger.

Mr. Monroe: I object and ask that the answer be stricken.

The Court: What was the question and answer?

Mr. Enright: I believe his objection is to one phrase in it; is that correct, counsel?

[Tr. 197] Mr. Monroe: I object to the entire answer. He was asked who the people were, and——

The Court: What was the answer, Mr. Reporter?

(Answer read.)

The Court: Overruled.

By Mr. Enright:

Q. And during your visits to the Orange Police Department were you interested in getting your coins back that were taken from your shop?

A. Yes, I was.

Mr. Monroe: Your Honor, may we approach the Bench for a motion at this point?

The Court: No, I don't want you running up here to the Bench all the time. Save up your motions and I will take them in chambers.

Mr. Monroe: I think it's crucial to—crucial for the defense to make a motion on the record at this time. Consequently, I would move for a mistrial at this point, based on the witness' response to, I believe, the second previous question.

The Court: All right. Come and make your motion then.

Mr. Monroe: It assumes——

Mr. Enright: If he is going to make it at the Bench, Your Honor, or else I will answer it right here. Let him choose where he wants to make it and I will answer it.

Mr. Monroe: Well, I have asked permission to approach the Bench, and I think that the motion has to be made at this [Tr. 198] time.

The Court: All right. Will the Jury step out in the hall a minute?

(Jury excused.)

The Court: Read that question and answer back, Roy—or Bill.

(Question and answer read.)

The Court: All right. Now, state your objection.

Mr. Monroe: Well, Your Honor, the objection originally was to the answer as a conclusion of the witness which is it assumes the entire fact which is in issue in Count III here, and obviously a conclusion that he burglarized——

The Court: Well, that portion of the answer, the people who took the money, Ted and whoever the other gentleman was, that answer will go out.

Mr. Monroe: Well, Your Honor, I, nevertheless, on a motion for mistrial, I think that, unfortunately, extreme prejudice has been worked this Defendant, because this answer, the people who burglarized, Chimel and somebody else, that answer has received the sanction of the Court at this point before the Jury, and I don't know how that prejudice could be undone at this point.

Mr. Enright: Your Honor, may I answer that? There is no objection to the question. There was an objection to the answer, and I have no objection to the Court—to the Jury coming back in, and the Court admonishing the Jury not to pay [Tr. 199] attention to Mr. Slocum's characterization of the two people.

The important aspect of it, who the two people are, and this will be developed that these people were there negotiating for the return of the coins.

Now, as far as the prejudice to the Defendant, there will be testimony in this case where the Defendant will from his own mouth say that he pulled the burglary here to someone. This is only Mr. Slocum's opinion; it is not a police officer's opinion.

The Court: In a case of this kind, let me tell everybody in the room, as far as that's concerned, if people would talk up so the Court can hear you, things would be much simpler.

Now, I didn't—when I made that ruling I didn't understand that answer.

Mr. Enright: I have no objection for the objection to be made with the Jury here and the Court admonishing the

Jury as to that characterization of the answer. I think the question is legitimate.

The Court: All right. Call the Jury back in.

Motion will be denied.

(Jury returns.)

The Court: Now, Members of the Jury, I want to make this statement to the Jury:

In the first place, I often wonder if I am getting hard of hearing, or whether people just don't talk. I go regularly [Tr. 200] to an ear man to have my ears tested, so I make that speech in preparation of what I am going to say.

Now, when Mr. Enright, the Prosecutor, asked the witness a question with reference to who the police department and he were dealing with to get the coins back, now, the witness' answer to that was improper, should not have been made, because he stated a conclusion on his part that Ted —and who was the other gentleman?

Mr. Enright: Hamburger, Percival Hamburger.

The Court: Hamburger, the persons committed the burglary in effect.

Now, that was an improper answer to give. I am not criticizing the witness at all, because he is not familiar with the rules of law, but now, that's solely and entirely his opinion.

Whether or not the Defendant here committed this burglary, that's what you are here to decide. It doesn't make any difference what this witness thinks, or what he doesn't think about who committed the burglary, and will you read the answer to the Jury?—No, never mind.

I will instruct the Jury very forcefully to disregard the witness' statement that the Defendant and this other gentleman were the people who committed the burglary.

Now, do you want to add anything to that, Mr. Monroe?

Mr. Monroe: I think that the Court has admonished the Jury as much as is possible under the circumstances, Your [Tr. 201] Honor.

The Court: All right. And I ask you, it would come as part of your obligation under oath not to consider the statement that Mr. Slocum made that the Defendant was one of the people who committed the burglary.

All right. Proceed.

By Mr. Enright:

Q. And so, Mr. Slocum, you——

The Court: Now, I want to say one more thing: He made the objection and I overruled the objection, and it was not until the Jury went outside and the Reporter read the answer back to me real clearly that I distinctly understood what the answer was.

So draw no inference from the fact that at first I overruled Mr. Monroe's objection.

Proceed.

By Mr. Enright:

Q. So, Mr. Slocum, at the Orange Police Department, along with Detective Del Coma, you were negotiating with Mr. Hamburger and Mr. Chimel for the return of the coins; is that correct?

A. Yes.

Q. And then at a later date you received a portion of the coins taken in the burglary from somebody; is that correct?

A. Yes.

Q. Somebody that you saw show you the coins?

A. Yes.

[Tr. 202] Q. Now, never mind what you may have heard, or anything, or such. Who showed you the coins? What individual showed you the coins, if you recall?

A. It was Del Coma.

Q. Detective Del Coma?

A. Detective Del Coma.

Q. So as far as you know from your own senses and hearing and sight, or sight, the person that showed you the coins was Detective Del Coma; is that correct?

A. Yes.

Q. And did you recognize those coins as coins that were missing after the burglary of August 15?

A. Yes, I did.

Q. Now, the numismatic value of coins, is this a stable thing, or does it fluctuate?

A. Yes, the price fluctuates quite a bit from day to day.

Q. Now, Mr. Monroe was inquiring about the value, a value, an estimated value of the coins that were missing in

the burglary, and I believe your answer was that the value, your estimate of the value was $23,000?

A. Approximately.

Q. That's an approximate valuation; is that correct?

A. Yes.

Q. Is this a numismatic evaluation?

A. This would be a wholesale value on the coins, if [Tr. 203] you were to go out and buy them.

Q. Buy them as——

A. As a dealer.

Q. As a dealer in coins?

A. Yes.

Q. Now, when you talked in terms of an inventory of $19,000 worth of coins, what value are you placing on the coins, if there is a consistent value?

A. You mean on the inventory?

Q. Yes, to reach that figure, 19,000.

A. Well, to reach that figure we took the coins that we actually purchased from other people that we still had on hand at the end of the year, which was the opening inventory, plus the coins that we went through and found ourselves, which we valued at dime for dime, nickel for nickel face value.

Q. And isn't it the common practice in the coin business for dealers to before they did away with the silver dollars in Las Vegas, to go to places like this where there were silver dollars available and rummage through packs of silver dollars and see if there is a dollar that has an exceptional value, more than one dollar?

A. This was a very common practice at the time silver dollars were out in circulation.

Q. And did you yourself ever do this?

A. Yes, we did.

[Tr. 204] Q. And how would you do it?

A. Well, we'd just, when we went to Las Vegas and go to Reno and just go to a bank and buy a bag or two of silver dollars, and go out in the car and look through them, and take the ones you didn't want back to the bank in exchange for more, and it was quite a job, but it was quite rewarding too.

Q. And when you found a silver dollar that was worth

more than one dollar, did you bring it back to your shop to utilize in your business?

A. Yes, we did.

Q. And did you mark this in the inventory as just a one-dollar piece?

A. That's right, just one dollar.

Q. You had not yet made any profit on that piece?

A. No.

Q. For all you know, the whole coin market could drop out the next day?

A. That's right.

Q. Were there quite a few people doing this is Las Vegas? Is that the reason why they don't have—one of the reasons they don't have silver dollars any more up there?

A. I guess this is one of the reasons. Everyone is hoarding them and everything else, trying to get the silver content up, but there were many dealers from all over the United States who would go to Las Vegas and Reno and do the [Tr. 205] same thing, in halves and dollars both.

Q. Now, I notice this is getting a little bit ahead of ourselves, but both Mr. Monroe and I don't have your inventory in July, but would it be a fair assumption to say that the inventory in July would reflect the coins that you purchased from other dealers at the wholesale value, plus whatever coins that you managed to find, or—in either this type of situation in Las Vegas, or just looking through coins at the face value?

A. No. This is a reflection of the coins that we found ourselves out of circulation, and the ones that we have bought from other dealers. It's a combination to make the figure.

Q. Now, yesterday we talked about that Trade Dollar, 1877-S Trade Dollar. I assume it was minted in 1877; is that correct?

A. Yes.

Q. And the "S" is some sort of a designation or type—is that a type?

A. It means where it was minted, San Francisco.

Q. And I believe you indicated that most of these—great majority of these Trade Dollars have chop marks on them?

A. That's true.

Q. And I believe you indicated that these chop marks were Chinese figures on the dollar?

[Tr. 206] A. Yes, symbols.

Q. Well, first of all, how come the dollars were over in China, do you know?

A. Well, to the best of my knowledge, I don't know the whole history of it, but the dollars were made here in the United States at the different mints, and were used as kind of like a universal dollar. They had a Continental Dollar way before that, and these were used as trade over in China and Japan, and around in there, where they accept them as a dollar's worth of silver.

Q. And what was the reason for chop marks, if you know?

A. Yes, I do. I am very familiar with this. This is a particular chop mark that a person in a colony or a particular county would put on the dollar to verify that it was pure silver, and not—they had a practice in those days in the 1800's of drilling the coin out through the middle with a drill and filling them up with lead, which they did gold the same way, and so this person would put a stamp on it, which meant that it was a real coin and it was a valuation, and some Trade Dollars would have up to 50, 75, a hundred chop marks where they had went from one colony to the next.

Q. And these colonies were in China?

A. Yes.

Q. And the mark would be some sort of a Chinese [Tr. 207] symbol; is that correct?

A. Yes, it's definitely—maybe the initials of the man. Of course, we can't read the initials as we know them here. They have different symbols for their initials, but each one would have a different initial on it of the man that did the actual stamping.

Q. And would this be struck into the coin to see if it had a silver underneath?

A. Yes, they have to strike it pretty hard to go in there.

Q. Now, the coin that you identified, the 1877-S Trade Dollar did not have the Chinese markings, but had some other markings that you recognized.

How many coins like that have you seen?

A. I have never seen a particular coin with this kind of knurling marks on it. It is definitely not chop marks. There's no doubt about it.

In fact, that's why the coin was kind of unique when we bought it, because we overlooked it, and we bought it from another dealer, and we paid over the price we should have, because at the time we had thought that it was a clean coin, and I didn't look it over real well, and I found out later that it did have the knurling, actual damaged coin—it is damaged, not an authentic chop mark, or anything, so we had to lower the price on it.

Q. And you did lower the price; is that correct?

[Tr. 208] A. Yes, we did.

Q. How many chop-mark 1877-S Trade Dollars have you seen?

A. Well, I wouldn't say particularly 1877-S. That is a common date, mint mark, but I would say I have probably 20 to 30 dollars, sold, but I have seen possibly hundreds of them without any doubt.

Q. And this is the only one that did not have the chop marks, and had those peculiar markings on it; is that correct?

A. Right.

Q. I notice someone put a price, or a mark on that that said 25. I assume it's $25?

Mr. Monroe: Object to that as hearsay, Your Honor.

Mr. Enright: Well, all right. I will withdraw the question. I was just getting to what your price was marked on that, if you remember.

The Witness: I believe we had it up for 22.50, and we lowered it down to 18.50.

By Mr. Enright:

Q. What was the going rate at that time in August for an authentic Trade Dollar that had the Chinese chop mark on it?

A. You take the two different types of a completely clean coin without the chop marks and one with chop marks, and the ones with chop marks, if you find the right individual that collects the shop marks on the coin, you can get a [Tr. 209] higher price than an originally clean coin that has no marks or anything on it.

I would say just to a regular person it would be a couple dollars less than a regular price of an unclean coin. If that

was a perfectly clean coin, it would probably go as high as 28 to $32, if it didn't have the dents in the back.

Q. Oh, I see. So, if the coin was completely clean, if I understand you correctly, it would be worth about $28?

A. Right.

Q. If it has the chop marks on the coin, Chinese chop marks, that might take it down a couple of dollars; is that correct?

A. Or it might take it up, depending on the chop marks and the person that's buying it. It's hard to price an item like that, and that's why you have to pretty well just put it in your showcase unpriced, because—or you can set a standard fee on it, but usually—it depends on the customer.

Sometimes they will pay under the price of the going price of a clean, uncirculated coin, or they will pay over it, but it doesn't vary much under $2 under the regular going price.

Q. Mr. Slocum, is there any doubt in your mind that this is the coin that is in evidence here that was in your store prior to the burglary?

A. No, there is no doubt.

Mr. Enright: Nothing further on this portion of the— [Tr. 210] Mr. Monroe: With the Court's permission, I'd like to take Exhibit, whatever it may be, the coin?

Recross-examination.

By Mr. Monroe:

Q. Mr. Slocum, I believe you stated you had been collecting coins for approximately 16 years?

A. Yes.

Q. And based on your experience in observing this coin, can you tell us what caused or what probably caused the marks on that coin?

A. It would just be an assumption.

Q. And what would that assumption be?

A. Well, I would say some object struck against it at a fairly hard blow.

Q. I think you earlier described this as a——

A. Knurling effect.

Q. Knurled mark, as perhaps a serrated edge might make; is that correct?

A. Yes.

Q. All right. I have here—excuse me just a moment.

I have here what appears to be a 1879 silver dollar. I'd like you to look at that coin and tell the Jury if you can see anything unusual about it?

A. Yes. It has knurling marks on it too.

Q. It does?

A. Yes. Someone's put them on there. Someone, it seems, has put them on there with striking another coin [Tr. 211] against it, with some kind of device.

Q. I see. Are you sure of this?

A. No, I'm not sure. This is an assumption. I haven't witnessed it done, so I couldn't be sure of it.

Q. This is the same type of mark, though, as appears on the Trade Dollar, Exhibit Seven?

A. There is quite a difference, because this is a brand new silver dollar, apparently has never seen circulation, which could mean various things. And this is a new chop mark within, I would say, within the last eight or ten years. It hasn't been like this all the time. This has been on this coin, it looks like—well, it's never been in circulation, so there is a definite difference in the two coins, to start with.

Q. Upon what do you base your opinion that the marks on the Trade Dollar have been there for eight to ten years?

A. Well, because the marks are still shiny where the rest of the—I just use this as a figure—eight to ten years. I use that instead of saying almost a hundred years.

Q. It could have been a hundred?

A. On this one?

Q. On the Trade Dollar?

A. No, absolutely not, because the Trade Dollar is too worn. It would be worn also.

Q. Now, how are coins of this type, or how were coins of this type, when they were being produced, transported from [Tr. 212] the mint?

A. All your silver dollars were in bags.

Q. How many coins to a bag, do you know offhand?

A. One thousand.

Q. And were they just loose in the bag, with no separators in there?

A. That's right.

Q. And in the course of such transportation isn't it a

fact, Mr. Slocum, that these coins would generally acquire what is known to numismatists as bag marks?

A. Rubbing bag marks, yes.

Q. And these bag marks were evidenced in fact by marks where the edge of one coin would come down against another coin; isn't that correct?

A. Well, I have never seen one like this, and I have handled bags and bags of dollars.

Q. Well, is that correct, Mr. Slocum?

A. No, not in my assumption. Not this particular kind of mark. You have a dig——

Q. Now, I've got a general question now: In the course of —in the course of transportation in these bags many of the coins in the bags would acquire marks made by the edge of another coin striking them; isn't that true?

A. Yes, this could happen.

Q. And those marks would exhibit serrations very similar to the marks on both Exhibit Seven and the 1879

[Tr. 213] silver dollar which you have before you; would they not?

A. There is a definite difference, because this is—we are talking about a coin in a brand new bag that's been knocked together, and we are talking about an old coin almost a hundred years old that's been in circulation for many, many years, with the same type and the same depth of marks.

Q. Now, when you say "a brand new coin," you are referring to the 1879 silver dollar?

A. Yes.

Q. How do you determine that that's a brand new coin?

A. Well, you can tell by looking at it it hasn't had much circulation.

Q. May I see the other coin?

A. Yes.

Q. Now, referring to Exhibit Seven, the Trade Dollar, where are the markings on that coin?

A. Left of the eagle's head.

Q. And that is an area, is it not, which is depressed to some extent below the surrounding areas?

A. Yes, this is true.

Q. It's in what is called by numismatists the field, I believe, is it not?

A. Right.

Q. This is an area, since it is a depressed area, surrounded by higher areas, is it not one which would not come into contact with normal rubbings, for example, in a [Tr. 214] person's pocket, it would probably not be touched because protected by the higher surrounding areas?

A. This is very true. It would have to be put on.

Q. And that being the case, doesn't it also follow that these marks could very well be bag marks?

A. No, it would be impossible on this coin, because the coin is too old to have bag marks on it, unless they would be wore down. These are sharp marks that are relatively new, not a hundred years old.

That is the only argument there that the coin is too beat up compared to this one to have the same amount of bag marks. The wear isn't even on the coin.

Q. But it is essentially the same type of mark, and it is in an area which, by the nature of the coin itself, is a protected area?

A. That's true.

Q. And is it not also a fact that there are many, many Trade Dollars in circulation which bear bag marks?

A. This I can't—never like this. They might have a dent or something on the rim, but not in the field like this. I have never seen one.

Q. Let's turn to the 1879 silver dollar. Where are the marks on that coin?

A. On the high spot, around the cheek.

Q. This is a very common mark on silver dollars, is it not?

[Tr. 215] A. This mark here? (Indicating.)

Q. Yes.

A. No.

Q. No?

A. No, it is not.

Q. Have you ever seen a silver dollar marked in a similar way?

A. No.

Q. All right. Then let's go to bag marks. When a numismatist refers to bag marks to what do they refer?

A. Rubbing on the coin, a light rubbing. A bag mark can't be a deep dent in the coin.

Q. Well now, Mr. Slocum, if bag marks refers to rubbing,

then wouldn't this be the same type of marking as though a coin had been worn in someone's pocket?

A. No, definitely not. In your pocket it gets all dirty, and it would show wear on it from being circulated.

In a bag, a bag mark can be just a rubbing of a coin, which it usually does. It's still brand new; it never leaves the bag. But in your pocket it would show definite signs of wear and handling.

Q. But with a thousand loose coins in a bag, when that bag is set down isn't there going to be some marking?

A. There will be rubbing on the coin.

Q. There's going to be some marking too, isn't there?

A. No, I wouldn't say any definite—no marking like [Tr. 216] this. There will be definite rubbing on the coin. This is what we term as bag marks, is rubbing on the coin. Little, bitty dings.

Q. Have you ever seen a silver dollar before with a marking such as this 1879 silver dollar?

A. Not on this dollar. The only other one I have seen is on here, on the Trade Dollar.

Q. These are the only two coins you have ever seen in these 16 years which bear marks similar to this?

A. This is true.

Mr. Monroe: No further questions, Your Honor.

Mr. Enright: Just one question.

Redirect examination.

By Mr. Enright:

Q. On the—when there are a thousand coins in a bag, I assume that each coin is loose by itself?

A. Yes.

Q. So, on being set down on some item, I assume that the thousand coins are in a movement situation, not one is being held in a fixed spot?

A. That's true.

Q. Now, would you say the 18—obviously the 1879 coin has not been in much circulation; is that correct?

A. That's very true.

Q. Obviously I am not a coin collector. Why wouldn't it have been in circulation? Could somebody have had that in a collection of some sort?

[Tr. 217] A. Either that, or they bought a roll of them from a dealer, or they could have bought a large amount from someone and just kept them. Very seldom you find something like this out of circulation.

Q. Now, does 1879 mean the year that it was minted?

A. Yes.

Q. So this coin, the 1879 coin, has been in circulation some—has been—not circulation—has been around somewhere since—for 87 years; is that correct?

A. Yes. It could have been in a Federal Reserve Bank. Sometimes they are in there for 50 or 60 years, coming out of the mint.

Mr. Monroe: Your Honor, forgive me for interrupting Mr. Enright, but I wonder if it might be appropriate to mark the 1879 coin for identification?

Mr. Enright: We keep referring to the 1879, I have no objection, Your Honor.

The Court: All right. It will be marked For Identification. Mark it For Identification. Defendant's Identification. We will leave it up to the Clerk to figure out a way to mark it.

Mr. Enright: There might be another cellophane bag around somewhere.

By Mr. Enright:

Q. And the 1877 Trade Dollar, therefore, has been around 89 years; is that correct?

A. Yes.

[Tr. 218] Q. And you feel by looking at it it's been in much circulation; is that correct?

A. Considerable amount. I'd say eight to ten years at least.

Q. And is it your testimony that, if it were rubbed or scratched in a bag of other coins 89 years ago, that with this type of circulation that shows on the coin that it would have been worn down? You wouldn't see the definite imprint that you see?

A. Definitely be kind of a blurring, and all you'd see was a very small hole instead of the whole outline of the impression on it.

Q. And in your estimate just by looking at the inside of it

is that it happened somewhat recently rather than 89 years ago?

A. Right, definitely.

Q. It couldn't have been a hundred years, because it was minted in 1877?

A. No.

Recross-examination.

By Mr. Monroe:

Q. You are not a metallurgist, are you, Mr. Slocum?

A. No, I don't have any degree in it. No. Went to Fullerton J.C. and studied many different courses.

Q. They don't teach metallurgy at Fullerton J.C., do they?

[Tr. 219] A. Geology.

Q. Geology: that has to do with the earth?

A. And your metals.

Q. I see. You didn't examine this coin under a microscope, the Trade Dollar, did you?

A. No, I did not.

Mr. Monroe: No further questions.

The Court: All right. You may step down.

Mr. Enright: May I have just one more question?

The Court: Yes.

Redirect examination.

By Mr. Enright:

Q. In the course of conversation with Mr. Chimel prior to the burglary, did he ever mention to you that he had an 1877-S Trade Dollar?

A. The only thing he ever mentioned he had was 20-cent pieces. No Trade Dollars at all.

Q. Did he seem to confine his interest in coins to the 20-cent piece area, as far as your shop was concerned?

A. Well, apparently all shops, 20-cent pieces and '51-S circulated nickels were about the two items that he liked.

Mr. Monroe: Nothing further, Your Honor.

The Court: All right. You may step down. Thank you.

Can we resume with Mr. Del Coma?

Mr. Enright: Well, Your Honor, I think that Mr. Monroe wants to—I can have maybe one short witness, or whether [Tr. 220] it would be more in sequence to have Mr. Slocum return with the documents, because we are still at that stage, whichever the Court——

The Court: Well, if you have a small witness we can dispose of it in ten minutes?

Mr. Enright: I don't know. I'd better ask him.

People call Miss Lane.

Pauline Lane: Mrs.

Mr. Enright: Mrs. Lane.

PAULINE LANE, produced as a witness on behalf of the People, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Enright:

Q. Mrs. Lane, are you related to Louise Slocum?

A. Yes, I am her sister.

Q. And you are the sister-in-law of Mr. Slocum?

A. Yes.

Q. Have you worked for your sister and brother in connection with their coin shop?

A. Yes.

Q. Did you work for them in connection with the coin shop in Fullerton?

A. Yes, I worked a while.

Q. And directing your attention to the coin shop in Orange, did you work there?

[Tr. 221] A. Yes.

Q. Directing your attention to approximately the ninth of August, 1965, did you go to work in the Money Vault shop of Mr. Slocum?

A. On what date?

Q. The ninth of August?

A. Well, it was a day or two after he had gone to the hospital that I went to help her out working in the shop. I don't recall the exact date.

Q. And you can remember it by the day or two he went to the hospital, and did you work during the period of time up to the time of the burglary?

A. Yes.

Q. Now, what time would you go to work in the morning?

A. Oh, about ten.

Q. And what time would you get off work?

A. Five o'clock, around there, approximately.

Q. And did you go to—did you drive to work yourself?

A. No. My sister would pick me up and we'd go open the shop, and at night she would come and get me, and we'd close the shop.

Q. And did you lock the shop up?

A. Yes.

Q. When you were working during this period of time did you move any of the items from the place where Mr. Slocum [Tr. 222] had them located?

A. Only to show them to customers, and then I would put them right back where I took them from.

Q. Directing your attention to August 14, a Saturday, did you go to work at the usual time on that day?

A. Yes.

Q. And did your sister drive you to work?

A. Yes.

Q. And what time did you close up that day?

A. Around five. It was usually around five.

Q. And where would you have your lunch?

A. Oh, I'd eat it there in the shop.

Q. You would take your lunch?

A. Sometimes I'd take it, and then next door I could order from next door, and I wouldn't have to leave the shop at all.

Q. Did your sister come by that day, August 14?

A. Yes.

Q. Directing yourself to August 14, 1965, did you have occasion to see Mr. Ted Chimel, seated at the end of the table there?

A. Yes, I did.

Q. Was he in the shop that day?

A. Yes.

Q. What was he doing in the shop?

A. He was just sitting there, looking around. I really

[Tr. 223] don't know. He didn't come in to buy coins or anything. He just was in there.

Q. How long did he stay in the shop?

A. Oh, he was there quite a while.

Q. Was there any conversation that you recall when he was at the shop?

A. Oh. Oh, I imagine we talked, but I—right now I don't recall what we talked about. Most of the time he just sat there on the stool by the wall.

Q. Now, directing your attention to the early morning hours of August 15, 1965, did you go to the shop next morning?

A. Yes, I did. My sister called me and told me what had happened, and that she came and got me and took me over to the shop.

Q Did you observe the damage to the two walls, or the wall—just the one wall, the wall in the back of the shop?

A. Yes.

Q. Now, when you closed up at night what would you do?

A. We would secure the alarms and lock up.

Q. How would you secure the alarms?

A. Oh, they were little things you string across the doorway, and then you'd just put them in their place.

Q. They were on some sort of attachment?

A. Yes.

[Tr. 224] Q. Did you ever accidentally knock one of those attachments open yourself?

A. Not that I recall.

Q. Would this be the last thing that you would do prior, before closing, locking the front door?

A. Yes.

Q. And did Mrs. Slocum drive you home that night?

A. Yes, she did.

Mr. Enright: That's all.

Mr. Monroe: I should be very brief, Your Honor.

The Court: All right.

Cross-examination.

By Mr. Monroe:

Q. Mrs. Lane, when you secured the alarms what did you do? Did you connect a wire or string or something?

A. Well, it's like a string, or a cord, and you connect it into a, a—into a connection.

Q. Where was this string or cord? Was it at the back end of the display cases?

A. It was at the doorway, over the back—you went into the shop, and then there was a doorway into the back area of the shop, and it was across there.

Q. Can you see this chart from where you are?

A. Yes.

Q. Would it be helpful to approach closer?

A. No. I can see fine.

[Tr. 225] Q. Would it be at this doorway here, referring now to the first partition as you come into the shop?

A. You go into the shop, and the first doorway you come to, it was there.

Q. It would be right there? (Indicating.)

A. Yes.

Q. There was no trip wire running across here, from the display cases over to the north wall?

A. No.

Q. I see. The trip wire was actually right here at the, what should be a doorway?

A. Yes.

Q. Was there any other trip wire in the coin shop?

A. I don't recall at that time.

Q. How far off the ground was this trip wire to which you refer?

A. Gee, I don't know exactly how—I guess down somewhere around the legs.

Q. You worked in the Fullerton store?

A. Yes, I did.

Q. During what months did you work there, Mrs. Lane?

A. I don't recall what months I worked there. I know just when they needed help I would help them, but I don't recall the exact time.

Q. Can you recall if you worked there at all in February of 1965?

[Tr. 226] A. No, I can't, because, as I say, I never paid any attention, really.

Q. If you can't recall, don't answer. If you can, fine, but don't guess.

A. I just don't remember the months.

Q. I assume that you have no idea what was or was not in the shop on August 14?

A. That I—pardon?

Q. I assume that you have no idea what was or was not in the shop on August 14?

A. I don't know. Approximately. I know that there were things that I observed that were there. I can't recall exactly the exaot amount that was there.

Mr. Monroe: No further questions, Your Honor.

Mr. Enright: Just one in a different area, but I think counsel was getting at it a little bit.

Redirect examination.

By Mr. Enright:

Q. When you worked in Fullerton do you recall a situation where the burglar alarm went off accidentally, or something, and the next day a box of coins was thought to be missing?

A. Yes.

Q. And the police responded to the burglar alarm, or whatever it was?

A. Yes.

Q. Was that box of coins in fact found?

[Tr. 227] A. Yes, they were.

Q. Did you find them?

A. Yes.

Q. And, to your knowledge, nothing was reported to the insurance company?

A. No, nothing that I can recall.

Q. Do you know how they were misplaced?

A. No, I don't. I don't recall how they got misplaced.

Q. Did you find them the next day, or someone, close to the time the alarm went off?

A. I don't know if it was the next day or not, how soon afterwards.

Mr. Enright: I have nothing further.

Recross-examination.

By Mr. Monroe:

Q. Would it be fair to assume—when you say "soon afterwards," would it be fair to assume that they were found within a week?

A. Yes.

Q. Did you make the report to the police of this loss?

A. No.

Q. Do you know who did?

A. No, I don't know who did.

Mr. Monroe: No further questions.

Mr. Enright: Nothing further, Your Honor.

The Court: All right. You may step down.

[Tr. 228] All right. We will take our noon recess at this time. Recess until quarter of two, 1:45 this afternoon.

(Noon recess.)

The Court: Stipulate the Members of the Jury are all present and in the box?

Mr. Monroe: So stipulated, Your Honor.

Mr. Enright: Your Honor, I believe Mr. Slocum is back on the stand at this point.

The Court: All right. Mr. Slocum, will you please resume the stand?

Bert R. Slocum, produced as a witness on behalf of the People, and having been previously duly sworn, resumed the stand for further

Cross-examination.

By Mr. Monroe:

Q. Mr. Slocum, did you bring your inventories with you?

A. No. We couldn't find them.

Q. Where did you look?

A. Looked all throughout the house.

Q. I see. And is this where they were when you last saw them?

A. They were either there or at the insurance company. I

tried to contact them, and I've got a call in; they are supposed to call me back.

[Tr. 229] Q. Did they give you any indication when they might call back?

A. No. They weren't in the office right then. They were out for lunch.

Mr. Monroe: Your Honor, Mr. Enright has indicated to me that he has some further direct, which he would like to direct to the witness, and as long as there is a possibility that these records can be located, I would like to leave it in abeyance until we can determine whether or not they can.

The Court: All right. Proceed, Mr. Enright.

Direct Examination.

By Mr. Enright:

Q. Mr. Slocum, in preparing your claim to the insurance company after the burglary and after you determined what was taken, what did you use in addition to the inventories to show what items were taken? Did you use anything else?

A. Well, we used our invoices. We marked each invoice for the particular coin that was lost, which should be in that box, which we submitted to the insurance company.

In other words, they wanted valid proof that these coins were in existence, and so we had to turn over the invoices and everything to them, and I don't think they are actually complete there. I think they returned some of them, because they have the actual insurance company; and then there is an adjuster that handles the claim.

The adjuster picked up some records, and we went up to [Tr. 230] place with some records ourselves.

Q. Do you have some invoices here in this box, to your knowledge?

A. Yes, there should be some in there right practically on the top.

Q. I wonder if you could get them out? I wouldn't know what they looked like.

I see in this folder you have a prepared list of, on blue paper, of various coin items. Did you prepare this list?

A. Yes, I did.

Q. What was the purpose of the preparation of it?

A. I can't remember which list that was. We prepared about two or three of them. Also in there there is a teletype list of the day we ran it—was the next day of the burglary was on a Monday. There should be three lists there: One of a teletype list of coins, and then those two there. I can't remember which lists they are, but—

Q. Will you look through this folder?

May this be deemed to be marked as People's next for identification purposes?

The Court: All right. It will be marked People's For Identification 10.

By Mr. Enright:

Will you please look through People's ID 10, and see if you recognize the items, and if you do, would you kindly tell us what significance, if any, [Tr. 231] any of those items had in your preparation of the list of items that were taken in the burglary?

A. Well, as far as the items, this rare stuff that was taken wasn't the common every day—every-day stuff that you sell over the counter. In other words, it is stuff that you stock for people who want to invest a little more money, and what we did, just like a coin dealer, like a used car dealer knows his coins. We know the coins we had.

Lot of people say, "You can't keep track of the 20,000 coins in your head," and this is true, but you have 15 coins that are of the value that you want to remember. The others are so close to face value, like in bags of pennies, which is 5,000 to a bag, worth 50, $55 each bag, you don't care about those dates, but the particular items we had was missing, whichever you want to call it, at the time, was the ones that we knew.

Q. And did the insurance company ask you to produce an invoice or receipt that you had bought these items, or purchased these items from someone?

A. Yes, they did. They wanted invoices for the missing coins.

Q. And do you have some of those invoices in that folder?

A. Yes, I do.

Q. Well, could you just read one over quick, how you

would identify this item as a missing item, an item that you [Tr. 232] bought?

A. Well, for instance now——

Mr. Monroe: I think I should object to the form of the question, reading an invoice to identify an item which was missing. If the invoice wants to go into evidence, it would speak for itself.

The Court: This is not offered to prove anything, is it? except the form of the invoice?

Mr. Enright: That's right.

The Court: Overruled.

Mr. Enright: That's all, Your Honor.

The Witness: I have on the sheet here listed one set of BU quarters missing that was in two plastic containers.

I also have an Invoice Number 10 for this set of quarters for $925.

They also went through my records to see if just this record alone doesn't mean enough. They want to know have I bought it? and then they want to know have I sold it, and am I claiming I still have it? So they went through both sets of records, through my invoices to check what I bought and what I had sold to verify it.

By Mr. Enright:

Q. So in something that I am familiar with rather than the coins, if somebody burglarizes my house and I have a lot of baseball bats, and I bought them, this is the way to show you bought the bat, and if I am in the business of selling baseball bats, I didn't sell it; is that [Tr. 233] what it amounts to?

A. Right.

Q. And this is the checking that the insurance company did; is that right?

A. Yes. And they also wanted my check numbers that these, you know, so that I guess they won't be just invoices that I did pay for them. They checked the invoices per my checks, each check was paid, each invoice was paid.

Q. So that this then was a check that the insurance company made to an individual item, or sets of items that one,

showed that you purchased them, and two, to show that you did not sell them before the burglary?

A. Yes.

Q. And when you made out an inventory do you know in the inventory if you bothered to put the invoice and invoice numbers next to the inventory?

A. No, I didn't.

Q. Was the insurance company's adjusters interested in the invoices and to see if you sold these items primarily in their investigation?

A. Yes.

Q. This is what they asked you to get together?

A. Right.

Q. Did they appear interested in finding out what your inventory was in '64 or '65 or July of '65?

A. No. They just wanted me to show them invoices for [Tr. 234] the coins that had been missing from the store, so, I guess, they could come to some kind of conclusion on the basis to pay for them.

Mr. Enright: Your witness.

Cross-examination.

By Mr. Monroe:

Q. The insurance company adjuster checked your invoices as a means of verifying the purchase of certain coins; is that correct, Mr. Slocum?

A. Yes, it is.

Q. They further checked your records of sales in order to determine whether any of those coins which had been purchased had then been sold; is that correct?

A. This is true.

Q. And in the absence of a record of sale for a coin which had in fact been purchased, then one of conclusions would follow from that:

It would either still be in your possession, or it would have been missing from the August 14th incident?

A. This is true.

Q. And the insurance company had no way of determining what was in your possession on August 15th other than what you showed them?

A. Well, the answer to that is that the portion of the coins that—do you want me to answer it?

Q. Yes, would you answer the question?

A. The portion of the coins returned is what did he—[Tr. 235] did he value on the rest that was missing? is the way they determined this.

Q. But on August 15th they had no way of determining what was missing and what was in your possession other than what you told them?

A. This is true.

Q. I may have asked you this question earlier. I don't recall it. If so, forgive me.

Did you have any regular period at which you took inventories every month, every three months, every six months, any regular period, at which you inventoried your store?

A. Yes, I think you asked me that, and the answer was we had no regular inventory, no.

Q. How did you—let me withdraw that.

You made an inventory in July of 1965. When was the next inventory before that time made?

A. Well, there was a spotting inventory at the time of the burglary, and there was inventory for, say,——

Q. No, before July, '65?

A. Oh, before July, '65?

Q. Yes.

A. I imagine the way it was always done was on a running inventory, by checking our stock. We had bins that we put it in, and we could look up, and if a certain amount had been sold we knew to replace it, and this is the way we kept always a running inventory that we could visually spot.

[Tr. 236] Q. Did you keep a written record of this running inventory?

A. Well, this is kind of impossible when you might sell 10,000 coins worth 35 cents apiece.

Q. Well, then your answer is no?

A. No, on those basis, yes.

Q. Did you have any written inventory before July, 1965?

A. Oh, from time to time my sister-in-law would take an inventory, yes.

Q. And as nearly as you can recall, when was the next one before——

A. This I don't recall.

Q. Did you take a year-end inventory?

A. This I don't recall either.

Q. Let me inquire. I'm not sure that I understand just what you mean by "a running inventory."

Can you explain to me what you mean by that term, that you kept a running inventory?

A. Well, this is, as I explained, was an inventory whereas all of our stock is in certain places, in bins. We had a big vault at the time, and we had these shelvings made where when we stocked rolls and bags of stuff, well, you had a certain number on each one of these bins.

There was an inventory every day, as far as that goes, every time four or five rolls were sold, it was wrote on [Tr. 237] there "minus five or six," and then it was replaced, and this was erased.

Q. Oh, this was written on what, Mr. Slocum?

A. It was written on the shelving.

Q. And this was actually attached to the fixtures within the shop?

A. Yes.

Q. I see.

A. And also we had filing cabinets full of coins that we did the same thing, with pieces of paper. We'd write on there how many rolls we had, and when they were sold we'd deduct them from the amount that was on there.

Q. These pieces of paper which were attached to the cabinets and shelves, they would, of course, I suppose, after a number of entries, become full, and they would have to be replaced, right?

A. Yes, this is true.

Q. What was done with the—what was done with them then when they were replaced?

A. You mean what was done with the ones that weren't any good any more?

Q. The ones which had been used.

A. Well, they were thrown away. I see no sense in keeping them.

Q. Am I correct in assuming that this method, speaking of the running inventory, was more or less a question of the [Tr. 238] method that some grocers use that, "I have a shelf so big here for number two peaches, and it's supposed to be full. If I look at the shelf, and it's not full, I know that

I have sold so much of it." Is this a fair description of the method?

A. Well, you might say it that way, yes.

Q. Then that method would imply that you would maintain pretty much a constant level of inventory. You would not have, for example, $15,000 a week, 30 thousand next? Wouldn't this imply that you would maintain just about a constant level of inventory?

A. No, it wouldn't. Depends completely on the market conditions, and if you got a good buy on something that was under the market, you would be over-stocked in that one item.

Q. You wouldn't have the exact same amount every month, but eventually it would level off?

A. One month you may have 200 of one object, and next month maybe five, and the next month be back to 200 or five. It just depends on the market value and what kind of a buy you got on a particular item.

Q. You entered the hospital on August 8. Who was your doctor?

A. Bruce Battleson.

Q. B-a-t-t-l-e——

A. s-o-n, on Chapman in Orange. It would be East [Tr. 239] or West—let's see—it would be East Chapman.

Q. You referred a moment ago to some of your coins being kept in a vault. Was this a vault within the store?

A. Well, it depends on which time you are speaking of.

Q. August 14.

A. No, this was in the shop on August 14.

Q. I see. Did you have a store with a vault in the store itself?

A. No, not at that time. No.

Q. I see. Did you earlier?

A. Yes, I did, and I do now.

Q. Where was this?

A. It's—we leased the First National Bank of Olive.

Q. The method of running inventory which you have described, this method would give you, as I understand it, no indication of the value of any coins which you were able to sort from pocket change, would it?

A. Repeat that.

Q. The running inventory method which you have de-

scribed, this method would give you no indication of the value of coins which you selected from those in circulation, would it?

A. Yes, it would.

Q. It would? And how would it do that, sir?

A. How would it do it? Well, when you have a bin of [Tr. 240] rolls that's worth 50, $60 a roll, and just because you got them out of circulation, if you sold them, you get the same price. Just because you found them in circulation doesn't mean they would be worth any less, and they would still be in the inventory as a roll. Doesn't mean you would sell it for less. Just means you paid less for it.

Q. You testified Tuesday, I believe—yes, Tuesday, that some of the rare coins which you determined to be missing on August 15 had, during the time you were in business in Orange, been shown to only one or two people. Am I correct in my recall of your testimony?

A. Repeat that, please.

Q. I think you testified that some of the rare coins which you determined to be missing on August 15 had, during the time you were in business in Orange, been shown to only one or two people; they had not been generally displayed?

A. This is true.

Q. Where were these particular coins kept?

A. The ones that were missing?

Q. The particular rare ones which had only been displayed to one or two people.

A. Well, they were intermingled in the bottom of the first showcase with a bunch of empty albums, just as if someone come in to take anything, they wouldn't be detected. In other words, they were just in with our regular stock of new albums with no coins in them. We had them intermingled [Tr. 241] in there.

Q. But these coins were offered for sale?

A. No. We had them underneath.

Q. I see. What did you have them there for?

A. To take them and put them in the bank, because we were not going to display these coins. We had a full showcase of coins. We didn't want any coin in the showcase over 50 to $75.

Q. Do I understand correctly then that these were in-

tended either to be held there in case someone should ask specifically for one of those, or to be taken over to the bank?

A. No. They were there for one reason and only one reason: to be taken to the bank. In fact, I was there about two weeks before we got set up, and if I hadn't went to the hospital this would all have been in the bank.

Q. Well, what were you going to do with them after you got them to the bank?

A. Well, these items are called for maybe once every two months. The reason for taking any $50,000 policy and making it 10,000 was to save money on the coverage, so the bank is right around the corner, it isn't even 200 feet, so I can easily close the shop and go to the bank in five minutes, and I didn't want the risk of having these kind of coins around. They are not an every-day shown item.

Q. Perhaps you didn't understand my earlier question. [Tr. 242] I asked you: Were these coins offered for sale, if somebody wanted to buy them, were they for sale?

A. Everything in the shop was for sale, as far as that goes, the showcases, anything anybody wanted to buy.

Q. Did you hear the testimony of Mrs. Lane?

A. Yes, I did.

Q. Having heard her testimony, did it refresh your recollection as to a report of a loss from the Fullerton shop made in February of 1965?

A. I vaguely remember it, but when I went outside she explained to me what it was, but there was no loss reported to the insurance company, or anything.

As far as turning it into the police, we didn't even call the police.

Q. You did not?

A. We did not call the police. We have silent alarm, and they were there about every day.

Q. All right. Now, I want to be very certain about this. You are very certain that you did not call the police regarding the loss in February of 1965 at the Fullerton shop?

A. To the best of my recollection, no, we did not call the police to the scene.

Q. I am afraid I don't understand altogether, Mr. Slocum. Do you mean that you did not call the police, or they did not come?

A. I said we did not call them to the scene. In other

[Tr. 243] words, this burglar alarm was going off all the time, and they were on our roof, it seems like, two times a week, and there was always problems over there.

Q. Let's see if I can narrow my question. Did you call the police?

A. Not to the best of my recollection, no.

Q. Perhaps you can give us some help here too, Mr. Slocum. As I understand it, there was a trip wire alarm in the Orange shop, and can you point out for me on People's Exhibit Eight, chart of the shop, where this trip wire was located?

A. I'm sorry, I don't understand the trip wire.

Q. Let me start from the beginning. What sort of burglar alarm devices were present in the Orange shop on August 14?

A. We had a hold-up button, and a regular silent alarm.

Q. And what devices, to your knowledge, were present to trigger the alarm?

A. I don't understand what you mean?

Q. Was there tape on the windows?

A. Yes.

Q. And switch with the door?

A. Yes.

Q. And then wasn't there a trip wire, or something of that nature?

[Tr. 244] A. You mean traps?

Q. Yes.

A. Yes, we had two traps.

Q. All right. Where were they?

A. Right where they are on there, D-2, D-3, were the traps.

Q. Mr. Slocum, you are at some distance from the chart. I wonder if it might be helpful if you approached it a little more closely?

A. Oh, yes. Could you bring it up here, please, closer? I have bad eyes.

Q. All right, surely.

A. Oh, I had them in the wrong places, I see now. Where the counters is, where it says "D-4", this was a hold-up alarm wire which ran across the floor, and would you like me to point it out? It would be easier than——

Q. Yes, I think it might be easier for all concerned.

A. This here is our hold-up buttons to attach to our showcase in front and back. This wire ran underneath on the floor. (Indicating.)

Q. That's referring to D-4?

A. Right. Now, this was a trap right here. When I say "trap", this is—when someone came in through here, well, if they didn't know it was there, of course, then it would come undone, or unlatch itself, and set off the alarm, plus we had another one. (Indicating.)

[Tr. 245] Q. And this was at the first partition?

A. Yes. Then we had another one that swung in like this from the second partition.

Q. There were traps on both partitions?

A. Yes.

Q. I see. Were these traps of the stretched wire or stretched cord type where it intended to activate the electrical circuit if someone contacted the wire or cord, whichever?

A. No, they would have to be completely kicked out and the contact would have to be broken. It is not just a contact. It has to be broken.

Q. But this was a device which involved a wire?

A. Right.

Q. Or cord suspended above the ground?

A. Yes.

Q. When you came down to the store on August 15 did you examine these traps?

A. I can't recall if I did or not. They must not have been up, though, because the officers walked up and back to the hole, so——

Q. When you came down to the store in response to the call on August 15, did you drive your car?

A. Yes, I did.

Q. What kind of a car was that?

A. It is a '65 Cadillac.

[Tr. 246] Mr. Monroe: I have no further questions.

Mr. Enright: Nothing further.

The Court: Both of you? You may step down.

(Conference at the Judge's Bench between the Court and counsel, without the Reporter.)

The Court: Call your next witness.

Mr. Enright: People call Mr. Thomas Ambrose. Mr. Ambrose, would you take the witness stand, please?

THOMAS RALPH AMBROSE, produced as a witness on behalf of the People, and being first duly sworn, was examined and testified as follows:

Direct-examination

By Mr. Enright:

Q. Mr. Ambrose, do you live in the City of Santa Ana?
A. I do.
Q. Whereabouts?
A. 2022 South Baker Street.
Q. Are you acquainted with Ted Chimel?
A. I am.
Q. By the way, do you pronounce that Chimel, Chimel? How do you pronounce it?
A. Chimel.
Q. Chimel. How long have you known him?
A. Approximately four years.
Q. Do you consider him, or had you considered him a close acquaintance of yours?
[Tr. 247] A. I did.
Q. Directing your attention to—by the way—strike that. How far away did he live from you?
A. At the——
Q. On August 14?
A. On August 14, approximately three-quarters of a block.
Q. Directing your attention to the evening of August 14, 1965, at approximately 6:30 p.m., or seven, did you have occasion to go to visit Mr. Chimel?
A. I did.
Q. How did you go over there?
A. I was a member of a bicycle club, and I rode my bicycle over.
Q. Did you ask Mr. Chimel to go bicycle riding with you?
A. I did.
Q. What did Mr. Chimel reply to this request?

A. His direct reply was that he could not as he had a, I believe the term was big deal cooking.

Q. Did you ask him about this big deal?

A. I did.

Q. And what did he say?

A. After some preliminary conversation leading up to this, he advised me that they were going to knock over a [Tr. 248] place.

Q. Did he indicate who the "they" was? who the other party was?

A. Negative.

Q. Now, did he mention how much money might be involved?

A. As I recollect, the sum was approximately 60,000.

The Court: How much?

The Witness: $60,000, Your Honor.

The Court: Thank you.

By Mr. Enright:

Q. Did he indicate what type of place it was going to be?

A. Yes; a coin shop.

Q. Did he indicate anything about the coin shop?

A. No. Other than they had the place all set; that being that they had it, to use the criminal vernacular, cased.

Mr. Monroe: Well, I am going to object, Your Honor, to the witness' interpretation of any conversation. If this was what was said——

The Court: All right. Objection sustained.

By Mr. Enright:

Q. Did Mr. Chimel indicate that the place was in business long?

A. Approximately two months.

Q. After he mentioned this to you what did you say to him?

[Tr. 249] A. Well, as I recollect, I told him that if he was really serious, that he'd better forget the whole idea.

Q. What did he say to you?

A. Well, that they had the thing all set, and they were going ahead.

Q. Did you have occasion to go with Mr. Chimel out to his car?

A. Yes. The conversation took place almost adjacent to his vehicle.

Q. Did Mr. Chimel show you anything in the car in relationship to this burglary?

A. Yes. He walked to the car, opened the door and removed a hand-type Walkie-Talkie from the front seat of the vehicle. He then extended the aerial of the Walkie-Talkie and said, "We were going to use these to keep a lookout." And he spoke into the Walkie-Talkie. He said, "Hello, Chuck. Come in, Chuck."

Q. And then what happened?

A. He said, "Well, I guess Chuck isn't listening or he's not home at this time."

Q. Did you terminate the conversation after this event, these events?

A. Yes, very shortly after that.

Q. Directing your attention to later in the evening of the same day, August 14, did you have occasion to return to Mr. Chimel's residence?

[Tr. 250] A. I did.

Q. Did you find Mr. Chimel at home?

A. I did not.

Q. Directing your attention to the following day, August 15, did you have an occasion to talk to Mr. Chimel?

A. I did.

Q. What, if anything, did Mr. Chimel say in relationship to the burglary he was talking about?

A. He advised me at that time that they had gone into this particular shop, although he did not designate which shop, and had broken through at least one wall. I cannot remember whether it was two or one at this time.

Mr. Monroe: I would again offer an objection, not for the sake of objecting, but since this is rather crucial testimony, as to just what was said, rather than any interpretation of it.

The Court: All right. Is there any part of what he's said you want to move to strike?

Mr. Enright: I wonder if it could be read back?

The Court: All right. Read the testimony back.

Mr. Enright: I think he was talking about the conversation.

(Record read.)

The Court: I think that is not subject to a motion to strike, so it will stand.

Proceed.

[Tr. 251] By Mr. Enright:

Q. I will clear it up.

Mr. Chimel did not say he could not remember one or two. That's your——

A. That is correct, that is mine. To the best of my recollection, he advised me that there was two walls. He then advised me that they had come in contact—and he did not state whether this was visual or physical contact—with black wires, which he at that time had believed to be alarm wires.

He then advised me that they had in fact not entered the building, but had backed out, due to fear of detection.

Q. After this did he say anything about the entire story he was telling you?

A. One part of the conversation that either took place later that evening—I can't state the exact time—was that he came back and advised me that they had in fact, not really done this. That he was giving me a phony story, and that he didn't want me to believe this at all, because he didn't want me to get that type of an opinion, that he was that type of an individual.

Q. That he was just pulling your leg or kidding you?

A. This is correct.

Q. Now, this conversation took place Sunday. At this time did you know of a burglary at the Money Vault coin shop?

A. I did not.

Q. When did you first find out about the burglary of [Tr 252] the Money Vault coin shop?

A. I had made mention of Mr. Chimel's conversation to my wife, and when I returned home from my place of employment the following Monday she showed me an article in The Santa Ana Register, which described a coin burglary in the City of Orange.

Q. Did you contact the police subsequently?

A. I did.

Q. When was that?

A. To the best of my knowledge, it was the following Tuesday. It could have been that Monday evening. I don't really remember.

Q. By the way, what is your place of employment?

A. I am a title officer with the Security Title Insurance Company.

Q. Excuse me just a moment. Mr. Ambrose, directing your attention to one or two weeks prior to August 14, did you have occasion to visit Mr. Chimel's house?

A. Yes, several times.

Q. Did you have occasion to see a rather large number of electric typewriters stored in his house?

A. Yes.

Q. Where were they stored?

A. Mr. Chimel at that time lived in a three-bedroom residence, one of the bedrooms of which was used for storage. The typewriters were in this room.

[Tr. 253] Q. How many typewriters would you say were there?

A. I am uncertain to the exact amount. I can say that there were more than a few, and other than that I can't make any actual count. I would say 11, 12, 15. It's hard to say.

Mr. Monroe: Object to this line of questioning. Your Honor, as irrelevant and immaterial.

Mr. Enright: I believe it will be connected up in the next few minutes, Your Honor.

The Court: Overruled. But will be subject to a motion to strike later on, if not properly connected up.

Mr. Enright: Yes, Your Honor.

By Mr. Enright:

Q. Did you ask Mr. Chimel about these typewriters?

A. Actually Mr. Chimel asked me if we used this type of —or electric typewriters in our office. I said, yes, that we did, most exclusively IBM. He wanted to know if the office was in the market for any, and I said I didn't believe so;

that all ours were furnished and serviced by a specific company.

I then asked him where he had gotten these, and he just smiled, and I said—he asked me if I'd like to buy one, and I said, "I don't know." I said, "Are they hot?" And I believe his term was, "Hotter than a $3 bill."

Q. Mr. Ambrose, have you ever seen Mr. Chimel work with his hands?

[Tr. 254] A. I have.

Q. And have you seen him work in relationship to coins, working on coins?

A. Yes.

Q. Is he very—how would you describe his ability to work with his hands and small objects?

A. I would say that Mr. Chimel is one of the most expert individuals in working with precision tools that I have seen.

Q. And have you seen him work on coins?

A. Yes.

Q. What does he primarily do with the coins?

A. Well, it is known to me that Mr. Chimel is a coin collector, and I have seen Mr. Chimel polish coins, in my opinion, age coins, polish them. I believe at the present time he has a method he is seeking a patent on to completely redo these coins to make them look, in my opinion as a layman, new.

Q. Does he have any equipment?

A. Yes. He has what in the dental profession is considered a dental lathe. It is mostly used for extreme fine polishing, grinding, et cetera. It is a variable-speed motor.

Q. Does he have these little items that can be used to mark things, such as dental technicians would have?

A. I have seen a great many picks, and the general type [Tr. 255] of thing that a layman would consider picks, used. These could be used for engraving. I, to my recollection, have never seen any real engraving equipment.

Mr. Monroe: I will object to this answer, and ask it be stricken, Your Honor, on what particular tools could be used for. This is obviously an opinion, and conclusion on the part of the witness.

Mr. Enright: I am willing to withdraw it, Your Honor.

The Court: All right. Question and answer both may go out.

Mr. Enright: Nothing further.

Cross-examination.

By Mr. Monroe:

Q. Mr. Ambrose, during this four years you have become pretty well acquainted with Mr. Chimel, have you not?

A. This is correct.

Q. And during a good portion of this period of time he was doing dental technician's work at his home, was he not?

A. This is correct.

Q. And for that reason he had the tools and the equipment which a dental technician would have; is that correct?

A. This is correct.

Q. You had a conversation with Mr. Chimel in the afternoon of August 14, and then you had two conversations [Tr. 256] with him August 15; is that correct?

A. I believe, yes, that's correct.

Q. Now, did you have a conversation with your wife shortly after the conversation with Mr. Chimel on August 15?

A. I did.

Q. What did you say to her?

A. I advised her that Ted, referring to Mr. Chimel, had come up with another one of his schemes. If I may clear this a little,——

Q. Well, Mr. Ambrose, didn't you say on that occasion, "Ted has come up with another one of his crazy schemes."?

A. This is correct.

Q. Or, in other words, you didn't believe him?

A. At that time there was some doubt in my mind, yes.

Q. And from the statement to your wife, would it be fair to assume that he had proposed some crazy schemes in the past?

A. This is true.

Q. Now, in the conversation Sunday morning, August 15, Mr. Chimel stated in detail that they had tried to enter and they had come to two black alarm wires; is that correct?

A. I don't remember exactly the statement of two black alarm wires. I do remember black alarm wires.

Q. I see. And it may have been two or it may have been just black alarm wires?

A. This is correct.

[Tr. 257] Q. In that conversation, Mr. Ambrose, conversation of Sunday, August 15, he told you that he, or they, had not entered the place they intended to; is that correct?

A. Yes; they had backed out.

Q. As a matter of fact, Mr. Ambrose, you are, have been all the time, and are now on friendly terms with Mr. Chimel, are you not?

A. Yes.

Q. And throughout all of these three conversations, am I correct in understanding that Mr. Chimel was referring to some other person?

A. Will you ask that question again, please?

Q. Let me see if I can rephrase it.

Referring to the conversation of Sunday, August 15, I think you stated that he said they backed out, implying that there was some other person to whom he referred?

A. This is correct.

Q. And in the conversation of Saturday, August 14, was he referring only to—looking only to his conversation, was he referring only to himself, or did he refer to "we" or someone else?

A. The conversation was always in the plural.

Q. I see. So all three conversations referred to someone else; is that correct?

A. With the exception of the last conversation when it was the singular; that he in fact had not done this.

[Tr. 258] Q. I see; I see.

Mr. Monroe: No further questions, Your Honor.

Redirect-examination.

By Mr. Enright:

Q. Mr. Ambrose, you remained on friendly terms with Mr. Chimel after the 14th and through the various court appearances and up to today; is that correct?

A. Yes.

Q. Do you recall Mr. Chimel telling you after one of the court appearances that you were the only one that could shoot him down on this thing?

A. Yes.

Mr. Enright: Nothing further.

Recross-examination.

By Mr. Monroe:

Q. Does that impress you as a true statement, Mr. Ambrose?

A. In what respect, sir?

Q. That this case turns heavily on the presence or the absence of your testimony?

A. I have no opinion.

Mr. Enright: That's asking for a wrong opinion, Your Honor, from the wrong person.

The Court: I believe so. Objection sustained.

Mr. Monroe: No further questions.

Mr. Enright: Nothing further. May Mr. Ambrose be excused, Your Honor?

The Court: Yes, Mr. Ambrose may be excused.

[Tr. 259] Let's take a recess for ten minutes, Members of the Jury. You may go, Mr. Ambrose. We will go until four, 4:15 or something like that.

Members of the Jury: Four?

The Court: Pardon me. Just a second.

Members of the Jury: Did you say 4:15?

The Court: Our present recess will be until three or five after three, and then we will continue the trial until four or 4:15, when we will go home, I hope.

(Recess taken.)

The Court: Stipulate Members of the Jury are all present and in the box?

Mr. Enright: So stipulated.

Mr. Monroe: So stipulated, Your Honor.

The Court: Proceed.

Mr. Enright: People call Mr. Jack Parsons.

Jack Parsons, produced as a witness on behalf of the People, and being first duly sworn, was examined and testified as follows:

Direct-examination

By Mr. Enright:

Q. Mr. Parsons, could I have your occupation, please?

A. I am in the—well, I have a coin shop, and I am in the steel business too.

Q. Directing your attention to the coin shop, is that the Lido Coin Shop?

[Tr. 260] A. Right.

Q. Where is that located?

A. 488 East 17th Street, in Costa Mesa.

Q. Are you acquainted with Mr. Ted Chimel, the Defendant seated on the left here?

A. Yes, I am.

Q. How long have you known him?

A. About two years.

Q. Directing your attention to point of reference, the Money Vault burglary which occurred on August 15, 1965, were you aware of this burglary? Did you hear about it after it happened?

A. Yes.

Q. How did you hear about it?

A. It was on the teletype service.

Q. Is this Mr. B. R. Slocum's teletype service?

A. Yes.

Q. Shortly after hearing about the burglary did Mr. Ted Chimel come down to your coin shop?

A. Yes.

Q. Did you have an occasion to have a cup of coffee with him?

A. Right.

Q. Where did you go for the coffee?

A. Across the street to the Snack Shop.

Q. While you were having coffee did Mr. Chimel mention [Tr. 261] anything in relationship to this burglary?

A. Yes.

Q. What did he say?

A. He mentioned that he was involved in it.

Q. What was the exact words that he used that you remember?

A. He just said he was involved in the robbery with someone else.

Q. And did he refer to BR's?

A. Yes, right, he mentioned that specific spot.

Q. And what else did he say?

A. (No response.)

Q. Did he mention anything about the possibility of going to jail, something like that?

A. Right. He mentioned that after he was through talking, and one thing and another, he was coming up here to Santa Ana, and he thought he would—that that was it.

Q. And did he indicate anything about selling coins, having coins sold to you?

A. He mentioned that, if something happened to him, that he wanted us to sell some proof sets for his wife.

Q. And what did you say to this?

A. We asked him if they were part of the robbery that he was talking about, and he said, "No." And I told him we'd have to make sure, and we'd call BR to make sure, and if they weren't involved, why, we would sell them.

[Tr. 262] Q. Did you and he have a conversation regarding his returning the coins to Mr. B. R. Slocum?

A. Yes.

Q. What was that conversation?

A. Well, I think I mentioned to Ted that——

Mr. Monroe: I am going to object at this point, Your Honor. Is this another conversation or——

By Mr. Enright:

Q. Same. This was in the same conversation, Mr. Parsons, at the coffee shop?

A. At the coffee shop.

Q. All right. What did you say to Mr. Chimel?

A. I just told him that I thought he ought to take the stuff back, and I thought, with a break, nothing would happen.

Q. And what did he say?

A. That he had given the coins to somebody else.

Q. Did he mention anything regarding typewriters that may be a problem, that would be a problem?

A. He said there were some typewriters, or something, involved with the same thing, and that was beyond me. I didn't quite understand it.

Q. Did he say what he did with the coins?

A. Yes. He just gave them to another party.

Q. Did Mr. Chimel mention anything about his partner in the burglary? mention his name or who he was?

A. No.

[Tr. 263] Q. Did he mention anything about whether or not he was engaged in this numismatic interest?

A. He was connected with some group in Beverly Hills.

Q. But he didn't mention his name?

A. But I didn't know who it was.

Mr. Enright: I have nothing further.

The Court: Cross examine.

Mr. Monroe: Thank you, Your Honor.

Cross-examination.

By Mr. Monroe:

Q. Forgive me, Mr. Parsons, I'm not sure whether you testified as to the date of this conversation that you had with Mr. Chimel.

A. I wouldn't know what it was.

Q. Can you tell me the month in which it took place?

A. Not now. I mean dates are of no importance to me.

Q. Was it in 1965?

A. Yeah.

Q. How long had you known Mr. Chimel at the time of this conversation?

A. About a year, I would say.

Q. And during the course of this year had you had various dealings with him back and forth with coins and so forth?

A. Yes.

Q. Were you contacted by Officer Del Coma regarding this conversation shortly after it took place?

[Tr. 264] A. Yes.

Q. And where did that contact take place?

A. At the Snack Shop again. Oh, pardon me. No, this—the conversation I had with the officer?

Q. Yes.

A. No, that was at the coin shop, Lido Coin Shop.

Q. I see. And can you recall what was said by Officer Del Coma during this conversation with him?

A. Not now. I mean other than just general questioning.

Q. Did he tell you that you could remain silent, that you could have an attorney present during the conversation, and that any statements made could be used against you?

A. Yes.

Q. Now, at the time of your conversation with Mr. Chimel can you describe to the Jury his demeanor? Did——. Well, let me ask you this—let's approach it this way:

At what time did you think he was serious? Did you think he meant this in seriousness?

A. I had mixed emotions. I mean I was surprised, first of all. I liked Ted, so I certainly didn't think he would be involved in something like that, and at the same time he was telling me he was, so it puts you in a rather odd position.

Q. During the year that you had known him had he—had you ever had a—any sort of joking relationship between [Tr. 265] you?

A. Oh, yeah.

Q. And had he previous to this time made statements in jest which later you found were not the fact?

A. I can't think of anything in particular.

Q. Well, did you consider him to be a very serious individual?

A. No.

Q. Did you at any time see Mr. Chimel in possession of any coins which were, or which you believed to be connected with Mr. Slocum's shop?

A. No.

Q. Has Mr. Chimel on any occasion looked over your shop in your absence?

A. Yes.

Q. And if you were called away from your shop now, would you, if he were present, would you ask him to look over your shop?

A. More than likely.

Mr. Monroe: I have no further questions, Your Honor.

The Court: Mr. Enright?

Redirect-examination.

By Mr. Enright:

Q. Mr. Parsons, when Mr. Chimel was talking about his wife, and that she would be in to sell some proof sets, you didn't think he was joking, did you?

A. No.

[Tr. 266] Q. And when you say he was not serious, he was known to tell a joke or laugh at a joke, or something like that; is that right? is that the way you described his personality?

A. Not in all honesty. I think Ted has a tendency to exaggerate.

Q. When he was talking about the coin shop, being involved in the burglary, did you feel that he was telling you the truth? Did he seem to be telling you the truth?

A. That's too hard to answer.

Q Well, did it give you some concern?

A. That it did.

Mr. Enright: Nothing further.

The Court: Anything further, Mr. Monroe?

Mr. Monroe: Nothing further, Your Honor.

The Court: You may step down.

Mr. Enright: May Mr. Parsons be excused, Your Honor?

The Court: Yes, you may go, if you care to. Thank you, Mr. Parsons.

Call your next witness.

Mr. Enright: People call Mr. Tom Del Coma back to the stand.

The Court: I will remind you you are under oath.

[Tr. 267] THOMAS H. DEL COMA, produced as a witness on behalf of the People, having previously been duly sworn, was recalled, and testified further as follows:

Redirect-Examination

By Mr. Enright:

Q. First of all, Mr. Del Coma, I believe earlier that you had testified that there was a wire running in this area of D-4 here, in here? (Indicating.)

A. This is correct.

Q. That you thought might have been a trip wire. Were you able to hear the testimony of Mr. Slocum that it was some sort of an alarm wire?

A. Yes, I was.

Q. Do you feel that possibly it might be that that was an alarm wire?

A. There is an alarm button in—

Mr. Monroe: I object, Your Honor, to what he feels the possibility may be. Is there one or not?

The Court: Sustained.

By Mr. Enright:

Q. Well, how do you—. Well, is there a trip wire here or not, to your recollection?

A. To the best of my recollection, it is what I would deem as a trip wire.

Q. How closely did you examine it?

A. Well, I was down on my hands and knees behind the counter. My partner tripped over it once during the investi- [Tr. 268] gation time on the morning of the situation.

Q. Did you notice any wires in between the first panel here? (Indicating.)

A. I don't specifically recall.

Q. Did you look there?

A. I passed through the entire length of the shop, examining the hole in the rear wall. The victim, as I recall, was attempting to establish any loss from the inner rooms back past the first divider. I don't specifically recall observing any trip wire or traps in this specific area.

Q. Who was the first officer on the scene?

A. Officer Barton.

Q. Now, you say your partner tripped over that D-4 wire. Was that before or after that you noticed it threaded there?

A. This was after we had examined the item. In fact, he almost fell down.

Q. But you had seen the bare wires first, and then he tripped over it second; is that right?

A. This is correct, to the best of my recollection. He is the one that directed my attention to it, due to the fact that the business did have an alarm system. Any time we have a

burglary where there is an alarm system installed, that's one of the first things we check, to ascertain if it had been bypassed or tampered with.

Q. Officer Del Coma, how long have you been employed [Tr. 269] by the Orange Police Department?

A. Approximately six and a half years.

Q. And how long have you been employed as a burglary detective?

A. About three years, eight, nine months.

Q. Were you so employed on August 15, 1965?

A. Yes, I was.

Q. Did you have occasion—. You did go to the Money Vault coin ship that morning; is that correct?

A. Yes, I did.

Q. Directing your attention to September 13, 1965, did you have occasion to go to the home of Mr. Chimel?

A. Yes, I did.

Q. Did you have an Arrest Warrant with you?

A. I secured a Felony Arrest Warrant with the charge of one count of burglary from the District Attorney's office.

Q. And in relationship to what burglary was this charge, count?

A. The Warrant was secured on the basis of the commercial burglary of the Money Vault, 153 North Glassell.

Q. And did you go to Mr. Chimel's residence with anybody else? was anybody else present?

A. Yes, I did. I was accompanied by two detectives from the Santa Ana Police Department.

Q. And Mr. Chimel lives in the City of Santa Ana; is that correct?

[Tr. 270] A. Yes, he does.

Q. When you arrived at his residence—oh, by the way—strike that.

Is this unusual, to have a detective with you from the jurisdiction that you are going to serve the Warrant in?

A. This is not unusual. It's a general practice in a City on assistance any time that any officer enters into another City's boundaries we contact the police department. We work with these people continually.

Q. Now, when you arrived at Mr. Chimel's residence in Santa Ana who was present?

A. With me or at the residence?

Q. At the residence.

A. At the residence a woman I know to be Mr. Chimel was present at the residence.

Q. What did you do? Did you knock on the door, ring the bell, or—

A. We we went into the residence and knocked on the door and Mrs. Chimel came to the door. We identified ourselves, asked her if we could step in and speak with her. She ushered us into the residence. I in turn, since I had made the initial verbal contact, intorucuded her to the other two detectives.

She asked us to sit down. There was a small child in the residence, moving room to room.

Q. Was Mr. Chimel there?

[Tr. 271] A. He was not present at the time we arrived at the residence.

Q. Did you ask for Mr. Chimel, ask Mrs. Chimel for him?

A. Not at that time. We were aware that he was not at the residence, and had gone to the residence to keep from approaching him at his place of business to cause him any problem there.

Q. Did Mr. Chimel subsequently return to his residence?

A. Yes, he did.

Q. What, if anything, happened when he returned?

A. Mr. Chimel entered the residence carrying a lunch bucket. He recognized me from prior conversation. To the best of my knowledge, he sat down a sweater on his lunch pail.

I stood up and informed him that we had a Felony Warrant for his arrest. I handed the Warrant to him to examine. Advised him of his rights at that time in the presence of the other people in the room. I asked him if he had any objections to my looking around the house. He said he'd rather that I didn't.

I advised him on the basis of the lawful arrest on a Felony Warrant, which he had just viewed, that I would like his wife to accompany me through the residence for a cursory search for any possible evidence from our burglary.

Q. Did she so accompany you?

[Tr. 272] A. Yes, she did.

Mr. Monroe: I will object at this point, Your Honor, on the ground that any search and any evidence of any search

was obtained in volation of the Fourth Amendment of the U. S. Constitution.

Mr. Enright: There is a whole line of cases, Your Honer, to support a search of the premises in connection with a lawful Felony Arrest Warrant.

Mr Monroe: I have a number of authorities which support my motion.

The Court: Well, I will overrule the objection. If I am wrong, I have made a lot of mistakes in the last few months.

Mr. Monroe: I would respectfully ask, Your Honor, there are some unusual circumstances here. There is an issue of law, which I would at least like to acquaint the Court with, although I am sure the Court is already familiar, but renew acquaintance out of the Jury's presence. I think they bear squarely on the issue presented here.

The Court: Anything to say?

Mr. Enright: Well, Your Honor, I am positive that we are correct, and I am willing to risk going ahead. At this point we expect to produce—go this far with the evidence. It will not be identified at this point. I think the Jury will be—if the Court feels we want to argue it now, but we have already discussed it.

[Tr. 273] The Court: I feel that it's proper for Mr. Enright to proceed.

Mr. Monroe: My purpose in raising the objection at this point, Your Honor, is that, of course, if it should be found that the search is unlawful, there would be no way to remove any evidence which was unlawfully obtained once it goes ahead and comes in.

The Court: Well, the ruling will stand.

Proceed, Mr. Enright.

By Mr. Enright:

Q. Did Mrs. Chimel accompany you in the search of the premises?

A. Yes, she did.

Q. What type of premises was this?

A. This is a three-bedroom residence located in Santa Ana.

Mr. Monroe: Your Honor, so that I may avoid any fur-

ther unnecessary interruptions, may I have a standing objection to this line of testimony?

The Court: All right. So ordered.

By Mr. Enright:

Q. What did you do as you accompanied Mrs. Chimel through the residence? Where did you go first?

A. To the best of my recollection, we went into what I would deem the adult bedroom, or the master bedroom. We asked Mrs. Chimel to open drawers, asked her to physically move contents of the drawers from side to side so that we might view any items that would have come from our burglary. [Tr. 274] She did this without hesitation.

Q. Did you notice any items at that point?

A. Yes. In the master bedroom and the—what she referred to as her sewing room, which in turn is a bedroom, we did—she did physically uncover certain items in drawers, and as we would spot them, we would examine them.

We picked up items that we felt were similar, or in fact the ones taken from our job. We left many items at the residence which we could not identify on the basis of a police report.

Q. What type items did you note in the bedroom, specifically? Not a coin collector's description. Did you find coins in the bedroom?

A Yes, we found coins.

Q. Did you find medals? Are you familiar with the term medals?

A. I am as a result of this case.

Q. Did you find—where did you find those?

A. The specific medals or tokens or specific individual coins as to a particular exact location would be very hard at this time to relate. We found an assortment of all items in the master bedroom area and again in the bedroom that was referred to as the sewing room.

Q. What did you do with these items as you picked them up?

A. These items were picked up by Detective Moreno from [Tr. 275] the Santa Ana Police Department and myself, prior to leaving the residence they were placed into a brown and a second bag colored blue, canvas-type hand bags.

Q. And were these items that you found—were the items

that were placed in the two canvas bags, were they found in what is called the master bedroom and the sewing room of Mr. Chimel's residence?

A. This is correct.

Q. Did these items consist of coins and medals such as you described?

A. Right. Plastic tubes and cardboard boxes.

Q. And were there coins inside the cardboard boxes?

A. Yes, there were.

Q. Now, after you placed them into the canvas bags what did you do with them?

A. On the completion of the cursory search of the residence Mr. Chimel, the two Santa Ana officers and myself, left the residence. After leaving the two Santa Ana officers off at the police department in Santa Ana, Mr. Chimel and I proceeded to the City of Orange Police Department.

Q. At the police department were the coins displayed to Mr. Chimel?

A. Yes, they were. We sat at my desk in the Detective Bureau and went through the coins and a duplicate list of the property was made, signed by myself, and he was given a copy of it.

[Tr. 276] Q. Did you make an inventory of the items taken?

A. Yes, a rough inventory. Not as to specific dates, mint marks, and this type of thing, due to the time involved.

Q. Directing your attention to September 15, 1965, did Detective Gallmeister and Moreno appear at the Orange Police Department?

A. Yes, they did.

Q. Did they bring anybody with them?

A. They brought a man and woman that I was introduced to as Mr. and Mrs. Vito Pulati.

Q. Did the Pulatis examine any of the evidence taken from Mr. Chimel's residence?

A. Yes, they did.

Q. Did they point out various coins and medals?

A. They made—

Q. In your presence?

A. —identification on medals and tokens in my presence, and the Santa Ana officers' presence.

Mr. Monroe: Your Honor, I assume that the objection raised still stands?

The Court: So stands.

Mr. Monroe: Thank you, Your Honor.

By Mr. Enright:

Q. Now, Officer Del Coma, have you kept these items, the items taken in Chimel's residence? Have you kept them at the Orange Police Department?

A. Yes, they have remained in the evidence locker since [Tr. 277] the time that they were impounded.

Q. And have you brought them to court today?

A. Yes, I have.

Q. Where do you have them now?

A. They are downstairs.

Q. Did you lock them up at my request?

A. Yes.

Mr. Enright: We are at the stage now, Your Honor, where the items down below, two bags, may I bring them up at this point? I just want to put them into evidence for identification purposes as to the outside bag.

The Court: Well—leave it up to you attorneys whether you want to go into this—I think if we start at it, we should finish it.

Mr. Enright: That's what I think, Your Honor. If I bring up the bags, then I think we will be in for —I don't know.

Mr. Monroe: I can Cross Examine at this point, if you want to defer bringing them up?

The Court: Well, I will just resolve the matter myself, and we will recess at this time until 9:30 Monday morning. That's the 11th of July.

And let me remind you, Members of the Jury, during this intermission, you shall not discuss this case amongst yourselves or with anyone else, permit anyone else to discuss it with you, nor will you form or express any opinion on the [Tr. 278] case until it is finally submitted to you.

I have many times also suggested to Jurors not to play detective in the meantime. Just listen to the evidence that comes from the court here.

From a Juror: Did you say 9:30?

The Court: Yes, 9:30 Monday morning.

All right. We will see you then.

[Tr. 279] Santa Ana, California—Monday, July 11, 1966

(James G. Enright, Assistant District Attorney, appeared as counsel for the People.)

(Keith C. Monroe, Attorney at Law, appeared as counsel for the Defendant.)

(Honorable David D. French, Judge Presiding.)

(William R. Macauley, C.S.R., Official Court Reporter.)

(The following proceedings were had outside the hearing of the Jury.)

The Court: All right.

Mr. Monroe: Your Honor——

The Court: People versus Chimel.

Mr. Monroe: Ready, Your Honor.

Mr. Enright: Ready, Your Honor.

Mr. Monroe: I would at this point like to make a motion for mistrial, and I have just filed with the Clerk a Memorandum of Points and Authorities, setting forth the bases for this motion, which essentially is this, Your Honor:

A search was made—two searches were made, as shown in evidence, by virtue of two Arrest Warrants. I have the Municipal Court files here and consistent with the usual practice, these Arrest Warrants were issued, as I understand it, solely on the basis of a Complaint, which was filed in the Municipal Court, and I think this procedure, the issuance [Tr. 280] of a Warrant of Arrest on that basis and no other is clearly struck down by the holding in Giordenello versus United States, which was, well, as set forth in the memorandum, a case which is exactly similar on its facts, and in which a similar Warrant was struck down absolutely.

This was then held in Aguilar versus Texas to be a Fourth Amendment case, and Ker versus California tells us that the standard set down by the United States Supreme Court are the—in Fourth Amendment case, as distinguished from Supreme Court supervisory powers case—but Fourth Amendment cases, standards, set down in the Supreme Court cases are the standards applicable to the States, and therefore relying primarily on Giordenello versus United States, I think the evidence which was seized under those Warrants is illegally seized and is highly prejudicial to the Defendant in this action.

Mr. Enright: Your Honor, among many cases that touch on this point is People versus Lawrence, 149 CA 2d at page 435 ON.

The Court: At what page?

Mr. Enright: 435.

The Court: Yes.

Mr. Enright: The question in the Lawrence case appears not only to be an arrest, but it was an arrest without a warrant. This was an arrest prior to actually getting a Warrant. It indicates the right of the officer to make an [Tr. 281] arrest under reasonable circumstances, and as far as the extent of the search, it says: "In making a search incidental to a lawful arrest an officer is not restricted to the area immediately surrounding the Defendant at the time of arrest, since the law contemplates a reasonable search in the vicinity." They can search in the house, or even in a garage. We have cases covering this point.

Getting down to counsel's point here, it says: "The reasonableness or legality of an arrest and ensuing search and seizure are determined initially and finally by the Trial Court without submitting the issue to the Jury." Because they feel that maybe certain other information would come in that perhaps wouldn't come in before the Jury.

Now, in this case this was a search—in our case, it was a search in connection with a Complaint issued in the Municipal Court, and a search—an Arrest Warrant. There is no question as to the scope of the situation. The Complaint was issued.

Now, if this Court wants to pass it—and maybe it should—pass on whether or not there was probable cause to issue that Complaint, I only can indicate to the Court that we have the evidence presented to the Court right now that Mr. Law had when the Complaint was issued in our office, namely, the corpus of the burglary.

Mr. Ambrose's statement as to the night before the burglary, Mr. Parson's statement as to the Defendant's state- [Tr. 282] ment after the burglary, plus a period of negotiations that hasn't been gone into in full detail, where the Defendant was negotiating to return the coins. If this isn't probable or reasonable cause to issue the Arrest Complaint, then I don't know what is, because not only did we go past the Preliminary, a 995, and we are now on the same evidence

going, and I expect to go to the Jury on, but if counsel is raising this point to indicate to this Court that the Court should pass on, or look behind the Arrest Warrant, I have no objection.

I think this Court has right before it the evidence that Mr. Law had, the evidence that the committing Magistrate had, and the evidence that the Superior Court Judge had on the 995.

Mr. Monroe: Well, Your Honor, I have no way of knowing what was or was not raised in the 995 motion. I don't think the point which I attempt to raise was before the Court in the 995 motion, because I have—well, I frankly spent the week-end looking for any case which deals with this point, and I find no California case.

For the most part I agree with counsel on the principles he states; that a search in connection with a lawful arrest may encompass the place of arrest. This is fine.

In order that there be no question, though, as to what my point is, counsel refers to the facts which were before the Magistrate issuing the Warrant. I suggest to Your Honor [Tr. 283] and recognizing that Your Honor issued these Warrants, I think the Warrants were issued quite in conformity with Penal Code Sections 806 and 813, which since 1951 have regulated the issuance of Warrants of Arrest.

However, I think the 1951 amendments to those two sections, 806 and 813, have reduced the Magistrate's function in issuing Warrants of Arrest to an absolutely ministerial function where the Magistrate simply checks to see if there is a Complaint in the language of the statute on file, and a Warrant is, of course, as a matter of fact, in the language of Section 813, the Warrant must issue, and this is exactly the point with which Giordenello deals, that there are no facts at that point before the Magistrate, and I would compare it for Your Honor.

The procedure which obtains on issuance of a Search Warrant—we all know that under the, what is it? 1524, 1542 of the Penal Code, the issuance of a Search Warrant requires an Affidavit stating facts in detail under oath, and absent an adequate statement of facts the Warrant may be quashed. There are statutory procedures for doing this.

Now, the United States Supreme Court has held that there is no difference under the Fourth Amendment between a

Search Warrant and an Arrest Warrant; that the same facts must be put before the Magistrate, and until the revision, the amendment of Penal Code 806 and 813 in 1951, this was certainly the law in this State.

[Tr. 284] For example, in 1887 an Ex Parte Dimmig cited in my memorandum, the court said, with reference to a Complaint and a Warrant of Arrest: "The liberty of a citizen cannot be violated upon the mere expression of an opinion under oath that he is guilty of a crime."

The typical Complaint filed in the Municipal Court and both Complaints in this case were on information and belief as permitted under 806. They set forth no facts. They are merely an expression of an opinion under oath. Therefore, probable cause is not before this Court, because the evidence has come in that the search and the arrest were under these Warrants.

Now, if this was an arrest without a Warrant, or a search without a Warrant, why, of course, the facts to support that would be called for, but the People have relied on the issuance of the Warrant of Arrest, and that's where the evidence comes from.

Thus, I think the question before the Court is whether these Warrants, which were certainly issued in conformity with the statutory procedure, but nevertheless, our question is whether this statutory procedure is legal, and I think on the basis of quite a number of authorities cited in the memorandum that there is no doubt but what the existing procedure is absolutely illegal under the Fourth Amendment of the United States, Fourth Amendment to the Constitution of the United States.

[Tr. 285] Mr. Enright: Your Honor, we have advanced a long ways in the law since the early days of Mr. Cardozo indicating that the dotting of an i and a coma was fatal to lawsuits.

To me it would be absolutely ridiculous if we would hold the position that a police officer goes out with a Warrant issued in good faith, and makes a search, that we cannot—we can say, "Well, let's get rid of the Warrant, and we cannot look upon the reasonableness of the search in view of not having a Warrant."

In other words, had Mr. Del Coma gone there without a Warrant, this Court under the People versus Lawrence

would look and see if it was reasonable, was he making an arrest unreasonably? But in going and getting a Complaint and getting a Warrant under the procedure set up by the Penal Code, we certainly don't throw out the fact of looking behind to see if a search was reasonable. This is in addition to the right that the officer has.

He could have made the arrest in this case without the Warrant, and the search without the Warrant, but he went and did something further. He went to the District Attorney's office, presented his evidence, got a Complaint and got an Arrest Warrant.

Now, we haven't reached a ridiculous position of the fact that Mr. Del Coma has done something in addition, that the Court always talks about, having time to go and get an Arrest Warrant, that the People are going to be penalized for [Tr. 286] this.

I think, number one, that there's nothing wrong with the Arrest Warrant; it was issued properly; evidence was presented before the District Attorney's office; a Complaint was drawn up, charging an offense, and the Warrant was issued.

Number two, he had probable cause to make the arrest in this particular case.

Now, there may be cases come up where there wouldn't be probable cause and an Arrest Warrant was issued, but in this particular case the evidence is right before the Court, so I think on both grounds this Court should indicate at this point, since he has raised it, whether or not, number one, you feel that the Warrant was proper and procedure followed was proper, and even if it wasn't, that on the evidence that has been presented in this Court, there was certainly more than adequate reasonable cause to make the arrest and also the subsequent search would be proper then.

Mr. Monroe: Well, this is a bootstrap form of reasoning, Your Honor, which has also been, I think, clearly rejected by the United States Supreme Court, because, as I understand counsel's argument, counsel's argument is: "We went over. We got an Arrest Warrant. We didn't need one, but we got it anyhow. Now, we want Your Honor to rely on what we knew at that time."

This is all fine except that what the District Attorney

[Tr. 287] knew at that time was not before Your Honor at that time, sitting as a Magistrate in this case.

Furthermore, sure, a lot of evidence has come in here. Now I think counsel would argue for a relation backstop: "All right. We got our Warrant. We protected ourselves. We went down, we made our search. We got our evidence. The evidence has come in here. Well, now you have heard it, so having heard the evidence, we can all see now that there was probable cause."

This is not the question, as I understand the decisions of the United States Supreme Court. The question is probable cause at the time, and there is again a significant difference here.

Number one, People didn't rely on probable cause. The People relied on, as the Dimmig Court characterizes it, an expression of an opinion under oath that someone was guilty of a crime. The People relied on this to get a Warrant, and the People relied on the Warrant. The People have relied on the Warrant here in this Court. The People have not relied on probable cause, and obviously the procedural situation would have been much different had the People relied on probable cause, because the door would have been opened, and I think it would have been a dereliction of duty—a reversible dereliction of an attorney's duty under People versus Ybarra not to have raised the issue of probable cause in the 995 motion.

[Tr. 288] I suspect the record of the 995 will show that this was not raised, thus the People adopt kind of a hydra-headed position here. They say, "Well, we got a Warrant. We foreclosed the issue on 995, but we think there was probable cause there anyhow."

Obviously the reliance was on the Warrant, and it doesn't befit the People now, having relied on the Warrant, to say, "Well, we got it, but we didn't rely on it."

I think the question before us is under the decisions of the United States Supreme Court: Was this Warrant any good or not?

The Court: The Supreme Court would undoubtedly hold it wasn't. I imagine, under the present trend of things.

Mr. Enright: I don't think they have; in spite of certain critics, I don't think they have gotten this far, Your Honor. We can just close up shop if they have.

The Court: Well, I would like, Mr. Monroe has gone to considerable effort here to write what looks like a rather scholarly memorandum, in support of his motion for a mistrial. Have you had time to read that, Mr. Enright?

Mr. Enright: No, I haven't, Your Honor. I have looked—he showed it to me this morning. I propose that we continue in session, but you sit down and read it and I will also read it, because I think we owe counsel that.

My offhand opinion is, I don't agree with you, Mr. Monroe, but I want to see what you have to say.

[Tr. 289] Mr. Monroe: I know that——

The Court: I think we should determine that before we call the Jury in the box. Incidentally, the Defendant is——

The Bailiff: He is here, Your Honor.

Mr. Monroe: He is here, Your Honor. I am sorry I didn't call him.

Mr. Enright: May the record indicate the Jury has not been in the box during this session, Your Honor?

The Court: None of the Jurors have been in the room. You don't need to get the Defendant unless you want to.

Mr. Monroe: Well, for the sake of the record. I didn't realize he was absent at this moment.

Mr. Enright: With the Defendant present are you renewing your request for a mistrial based on the authorities submitted to this Court?

Mr. Monroe: Yes, Your Honor, with the Defendant present, renew the motion.

The Court: All right. You will please read this too, Mr. Enright?

Mr. Enright: Yes, Your Honor.

The Court: What procedure would you suggest, Mr. Monroe?

Mr. Monroe: Your Honor, I think that the courts throughout the country are bound to submit an Affidavit to any Magistrate who is empowered to issue a Warrant of Arrest, just as United States officers are bound to submit an [Tr. 290] Affidavit to a United States Commissioner before an Arrest Warrant may issue, and I think that this is demanded under the existing decisions of the Supreme Court.

The Court: Have you read the memorandum yet?

Mr. Enright: Yes, I have, Your Honor.

The Court: Do you have any comments to make on it?

Mr. Enright: Yes, Your Honor, I am very interested in page five. I notice that we don't seem to set out the Penal Code, but since we are talking about the Federal cases, counsel has cited Ker versus California, and he indicates that the Ker case holds in effect that although the States may develop their own rules of procedure, the decisions of the United States Supreme Court in applying the Fourth Amendment will provide the "fundamental criteria as to the reasonableness of a search."

Now, first of all, I think the procedure is quite proper, but in looking at any search the Court looks through the eyes of the police officer.

Now, the police officer has taken quite a beating in the last two years by the courts, but maybe in areas where there had to be some correction, but the Court always looks at a search in the eyes of a police officer: Was he reasonable? Did he have probable cause to search?

What does the officer do in this case? The officer finds out that Mr. Chimel had been in the premises the day of the burglary. He finds out that a good friend of Mr. Chimel [Tr. 291] was talked to by Mr. Chimel about committing a burglary of a coin shop. He finds out that after the burglary of BR's coin shop Mr. Chimel admits to another friend of his that he pulled the job.

He also finds out that Mr. Chimel is negotiating to return the coins. He goes to the Orange County District Attorney's office, gets a Complaint, based on this information, has it signed by a Magistrate, and goes to the house of Mr. Chimel.

I submit we haven't reached the stage of technicalities that we are going to ever take our eyes off the officer as was he acting reasonably? He could have gone directly to the house and searched. Supreme Court hasn't challenged that. But instead he went to the DA's office, went to the Magistrate, and then went to the house to search. If they throw out the Arrest Warrant, he is still in that house, and he still has a right to search, and he still has a right to make an arrest.

If the Arrest Warrant was faulty, if whoever was the Magistrate did not sign it, if there was some technicality that made it a faulty Arrest Warrant, I don't believe for a moment that the People couldn't go ahead and show the reasonableness of the officer in making the search with the

faulty Arrest Warrant, because that is the ultimate test, whether he was reasonable. And we haven't reached the point, whether the procedure should be changed in California or Idaho, that [Tr. 292] the Supreme Court is going to substitute its judgment in making searches. It looks at the police officer to see if he is reasonable. This is our contention.

We feel there is no grounds for mistrial on either situation. But I think the Court should look at it from both sides, and if there is more evidence that's necessary out of the presence of the Jury, I understand the Defendant has Mr. Law, our Deputy, under Subpena, but this Court has heard from Mr. Ambrose, who Mr. Del Coma had contacted before the Complaint was issued, from Mr. Parsons, who Mr. Del Coma has contacted before the Complaint was issued, and, of course, we heard the corpus of the burglary, and we heard all the other evidence leading up to the arrest of Mr. Chimel.

I have no objection to this Court reviewing that evidence at this point.

Mr. Monroe: Well, Your Honor, once again, we are back to the two-headed argument that we got a Warrant. We have relied on it through these proceedings. We relied on it in this court. Now, it appears that this Warrant may not be any good, so let's rely on something else, because, as I have suggested to Your Honor, had there been no Warrant, had it been a question of relying on probable cause, this certainly would have been an issue which should have been explored by counsel, and there was good counsel on this case before I was, which I feel sure would have been explored by that good counsel on 995.

[Tr. 293] Mr. Enright: I have no objection to an exploration into the entire depths of probable cause at this point.

Mr. Monroe: Now, the difficulty at this point is the United States Supreme Court has said squarely that the inferences from the facts which lead to the Complaint must be drawn by a neutral Magistrate, and obviously there must be some facts before this Magistrate before any inference can be drawn.

Under the statutes as amended in 1951, the Magistrate's function in this State is a rubberstamp function: Is there a Complaint on File? Yes, there is a Complaint on file. Warrant issued. Obviously this requires no discretion, no evalu-

ation, no nothing, and I think the thing with which the United States Supreme Court is concerned can be best illustrated by example.

I can go to the Clerk of the Municipal Court and get a Complaint form and fill it in that on my information and belief Joe Smith has committed a burglary, and I sign it, submit it to the Court, and under Penal Code 813 it is mandatory on that Complaint, if I simply put in the language of the statute, it is mandatory—must—on the Magistrate, to issue a Warrant of Arrest for the person I have designated.

He may be searched. If the search turns up something, fine, we are all home free. If the search does not turn up something, I may be sued. His chances of succeeding against me in a suit are, as we know, and as the Supreme Court of [Tr. 294] the United States and our own State Supreme Court has said, their chances of success in that suit are extremely minimal.

This really is the whole problem: That if Warrants of Arrest and the things which follow Warrants of Arrest are permitted on someone's expression of opinion under oath, the Magistrate is passing on nothing. The neutral detachment judgment for which the Magistrate is supposed to be used is not present there, because he has no opportunity under these statutes to use his neutral and detached judgment.

Rather, it puts the Courts and the Defendant in exactly the place which has been struck down by the United States Supreme Court. They are relying on the judgment of the District Attorney or of the policemen who are officers engaged in the often competitive business of ferreting out crime. It is their judgment which supports the Warrant of Arrest, and this I submit to Your Honor——

The Court: What are you going to do in situations of that kind?

Mr. Monroe: An affidavit, I think, must—well, to go even a little further, I think Affidavit before any Warrant is issued is an absolute requirement for this reason: We have——. The reason I go in my memorandum back some years is to illustrate that the requirements initially under the 1872 Penal Code for a Search Warrant and for an Arrest Warrant, were precisely the same. They required a detailed

factual statement under oath before a Warrant of Arrest could [Tr. 295] issue.

Now, we have retained the Search Warrant procedure, and we follow it without question, thinking that it is very important to protect people's homes from being invaded, to protect people from having the exploratory search, the search under the general Warrant. We feel that this is very significant.

Now, I suggest to Your Honor that an individual's integrity in his person is entitled to, and is required to have as much protection as is the tangible property which he has in his home. The person of the individual throughout our jurisprudence history has been near sacred. Yet, under our procedures here in California we protect the tangible property which I may have in my home, but we don't protect my person.

I suggest to Your Honor that this case, this case which is now before this Court is an excellent example of the Arrest Warrant under what I insist are the presently illegal procedures being used in fact as a Search Warrant, because in this case we had not one Arrest Warrant with a comprehensive search, based on that Arrest Warrant. Indeed, we had another Arrest Warrant the day following, which was executed in the same way: Go down to the house, wait for him to get home; as officer Del Coma in this case testified, he didn't go with his Warrant to where he knew the Defendant was, at work. He had knowledge of where he was. He knew where to pick him [Tr. 296] up. He could have followed the man with the Warrant. He didn't go there. No. He went to his home, and he waited, because if he waited long enough, then he got home. Then he made an arrest in the home, and, of course, there is no question, if this had been a lawful arrest, he would have had a right to some search there.

But he waited, particularly at the home, even though he was disobeying, at the moment, the command of the Warrant. The command of the Warrant was to go get this man where he knew he was. He disobeyed that to be at the home in order to make a search, based on that Warrant.

They weren't satisfied with this one. They got another Arrest Warrant the next day. Again went to the home, and they again searched the home.

I suggest that, Your Honor, that this is a substitution of

the Arrest Warrant for the Search Warrant. The whole case turns on it. It's illegal under the Fourth Amendment.

Mr. Enright: First of all, Your Honor, that second Search Warrant, search is not before the Court at this point.

The only testimony before the Court is the case involving the BR, BR's coin shop, the Orange Complaint. The Warrant was issued, a search was made incident to an arrest, coins were picked up, and lo and behold, the coins turned out to be coins that were involved in the burglary in Santa Ana which happened six months before, and the Santa Ana police went out and got their Complaint, and went out apparently at [Tr. 297] a second date; but before the Court is only the Search Warrant growing out of Orange.

Now, Officer Del Coma indicated that he didn't go to the man's employment because he didn't want to embarrass him, arresting him at his employment, and the fact that he went to the house, as far as being a convenience to the Defendant, it was also good police work, but I think we reach a ridiculous situation because counsel has not mentioned the things that he should complain of.

He has a complaint, but he doesn't make it. He stays away from it. He stays away from the whole gist, thrust of this argument that he could make before a component Court. He could be up arguing to this Court, saying, "Wait a minute, this Arrest Warrant puts this Defendant in a difficult position. The Warrant itself comes out, goes out there, allows the officer to go out, as this vehicle, as a vehicle, to search his premises incident to a lawful arrest, and I have no way of ever going behind the Warrant. I cannot ever petition the Court to look behind the Warrant before the evidence goes in before the Jury. I have no way in asking this Court to look and see if there was probable cause, as this Court would have to do if there was an arrest without a Warrant."

He doesn't want to make that argument because we have been suggesting that this Court do that very thing, pass on it, give it all the protection, as if it was made out an [Tr. 298] Arrest Warrant, pass on the evidence to see if it's reasonable and probable.

The People are suggesting to do this. If this Court in its decision says, "I will not pass on the evidence. I will not look at it to see if there was reasonable and probable cause to make the arrest at that point." There may be some Court

existing in the high never, never lands of impractical aspects of the law saying, "Well, that Court should have passed on it."

We don't have that particular protection; we don't believe that giving that protection to a piece of paper, and they have done this in Search Warrants. They have said that the Search Warrant should be looked behind by a Magistrate, and they have set up a definite procedure, but in the absence of the proceduer, I would suggest that we treat it just as we would an arrest without a Warrant, and I would suggest that this Court looks at the evidence before it, the evidence that the officer had, to see if it was reasonable and probable.

And the reason why the Defendant does not make this argument, this thrust of his argument, is because he realizes that, if the Court does that, he can show no prejudice. The Court is not only affording the protection of an arrest without a Warrant, the right the accused has—the accused has that right. We don't give him the right to say, "All right, fellow, we don't allow any searches." No, [Tr. 299] no. The whole test the Supreme Court ever talks about is reasonable and probable cause to make the arrest, and after the arrest, of course, the search may follow.

So I suggest to this Court that in making its decision it look at whether or not the officer had reasonable and probably cause in making his arrest.

Mr. Monroe: Your Honor, I appreciate Mr. Enright's candor in making clear to the Court that there is no procedure for going behind a Warrant of Arrest, and the fact that there is not is in itself prejudicial, because I suggest that this Defendant at this point has been deprived of a substantial right under 995, due to the fact that there is no procedure for going behind the Warrant of Arrest.

Of course, we have no way of knowing, but I should imagine that if a pre-trial motion were filed to question the validity of a Warrant of Arrest, that there would be a lot of arm-waving and shouting from the office of the District Attorney that there is no procedure for it. You can't do it.

Mr. Enright: It would be inconsistent with my present position, Your Honor.

Mr. Monroe: I think there are cases which hold to this

effect. I didn't realize this would come up so I haven't cited them, but I believe there are cases to that effect.

I think the prejudicial thing is that all of the reliance has been placed on the Warrant. The evidence has [Tr. 300] started to come in. This is hardly the time or place to litigate probable cause as of September 13, 1965.

The Court: Well now, gentlemen, I have heard enough. The motion for mistrial will be denied.

Get the Jury in and I will take just a few minutes and then we will start immediately.

(Recess taken.)

The Court: Let the record show that the District Attorney and defense counsel and Defendant and the Court and the Reporter are present in chambers.

Mr. Enright: Right, Your Honor. Before we go back with the Jury, and frankly, what I am doing it for, so we narrow anything down on appeal so it's clear, I would like to request the Court, if the Court has not already done it, in reviewing the motion for mistrial, to give the Defendant the additional safeguard of reviewing the evidence as to the probable cause of the officer at the time that he served him with the Arrest Warrant to make the arrest.

I would prefer that this Court would have that additional safeguard in reviewing the evidence as to probable cause, and not just decide on the document. I don't know what your decision was—I don't know what the basis of the decision was—I know what the decision was, as to the motion.

Has the Court done that?

The Court: I don't know. Now, you mean review what specifically?

[Tr. 301] Mr. Enright: Review the—give the Defendant every right that he would have if we did not rely on the Arrest Warrant, that the officer was arresting him without a Warrant, and the Court asking itself: "Did the officer have probable cause, based on what he knew at the time of the arrest to make the arrest?" Because the Defendant's argument—I don't want some reviewing Court to say they don't know what was in the Court's mind—the Defendant's argument, of course, would be, on appeal, from this case, would no doubt be that the Court merely decided that once there was an Arrest Warrant issued, that's it, and foreclosed any

looking at the evidence in the way to see whether there was probable cause.

At this point I want to give the Defendant that safeguard that reviewing the evidence of what Mr. Ambrose had told Mr. Del Coma, what Mr. Persons had told Mr. Del Coma, the partial evidence that we have heard about the negotiations with Mr. Chimel, and, of course, we can go into this in much greater detail in that it bears just merely on the issue of probable cause, if the Court wants, the fact that Mr. Chimel was at the store the day before the burglary. We wish to have the Court review this evidence to see if there was probable cause.

The Court: How do you mean review it?

Mr. Enright: Review it in its mind right now in passing on the mistrial.

[Tr. 302] Mr. Monroe: Are you through, Mr. Enright?

Mr. Enright: Yes.

Mr. Monroe: I would say this, Your Honor: Number one, I would object to the approach which Mr. Enright has taken in that I don't think this issue is properly before the Court, in the first place, because until this time there has been no vehicle in terms of the Preliminary Examination or the 995 motion to review this. This is something which should be reviewed there.

And furthermore, I think—I don't know if there is such a thing as an estoppel in a criminal case. Perhaps an estoppel in a criminal case would be phrased in terms of fundamental unfairness, but I think that situation exists since there has been reliance placed by the People on the Warrant through and through, that the question of probable cause for arrest without a Warrant is not open for review by this Court at this time.

However, if the Court, on Mr. Enright's motion, should decide against me, I would suggest that Mr. Enright's motion requires the taking of Voir Dire evidence out of the presence of the Jury, in order to conclude the question, and, of course, in saying that I don't waive any objection to consideration of the question posed by Mr. Enright; but, if the objection should not be sustained, then I think it requires Voir Dire evidence.

The Court: Well, I never had any question in my mind [Tr. 303] about probable cause. It's entirely beside the

point. But one reason why I was—this case sort of attracted my attention when it first came up, while I have no interest in the property that was burglarized, I own property right —throw a rock over to, from this particular property, and to come right down to it, Tom McLaughlin of the McLaughlin Shoe Store, and I were Rotary Club together for years, and things like that, that, as I say, they had no real connection with the case, yet which sort of gave it a bit of a personal interest that most cases wouldn't have.

I may say for the record that I never have talked to Mr. McLaughlin about this case, or any of the other merchants along there, but I am just explaining to you why I think the facts in this case probably registered in my mind more than many other cases.

It seems to me there's probable cause.

Mr. Monroe: Well, inquiring, Your Honor, the facts to which you referred, those would be facts which were before Your Honor on the Preliminary Examination?

The Court: Yes.

Mr. Monroe: Rather than facts which were connected with the issuance of the Warrant of Arrest; would they not?

The Court: I realize that. I think the evidence in this case has been introduced in the present case out here shows plenty of probable cause, and I base my finding that there was probable cause on the evidence which has been sub-
[Tr. 304] mitted in trial of this case, which started when was it? July 7, I believe, on or about July 7—for the record, so there will be no—we started, selected the Jury on the fifth, didn't we?

Mr. Enright: On the fifth, Your Honor.

The Court: Started the trial, to take evidence on the morning of the sixth. I think there's ample evidence in the record to support the finding of probable cause.

Mr. Monroe: If I may inquire: Is Your Honor's finding based on all of the evidence in the case?

The Court: Yes. Does that satisfy everybody?

Mr. Enright: All the evidence relating to the information Mr. Del Coma had at the time of the arrest?

The Court: Yes.

Mr. Enright: Yes.

The Court: Stipulate the Members of the Jury are all present and in the box?

Mr. Monroe: So stipulated.

Mr. Enright: So stipulated, Your Honor.

The Court: Now, Members of the Jury, if you think we have been drinking coffee and telling jokes all morning, you are mistaken. I have been a hundred percent occupied ever since I got here.

All right. Proceed.

Mr. Enright: People recall Mr. Del Coma to the stand.

[Tr. 305] THOMAS H. DEL COMA, Recalled as a witness on behalf of the People, and being first re-sworn, was examined and testified as follows:

Redirect examination.

By Mr. Enright:

Q. Mr. Del Coma, I believe that you testified that on September 13 with an Arrest Warrant you went to the premises of Mr. Chimel, and waited for him to arrive, and he subsequntly did arrive; is that correct?

A. This is correct.

Q. And that after the arrest and advising him of his rights, et cetera, showing him the Arrest Warrant, a search was made of a bedroom and a converted bedroom that was called a sewing room; is that correct?

A. This is correct.

Q. And in the search of the bedroom and the sewing room numerous coins were found by you and picked up by you; is that correct?

A. This is correct.

Q. Now, what did you put the coins into?

A. Many of the coins were already in cardboard boxes. As we collected the property we assessed a small sack of them. For the benefit of transportation from the residence Mrs. Chimel provided us with two small hand satchels so as to keep the property all together.

Q. And were the coins and materials that were picked up placed in these satchels?

[Tr. 306] A. Yes, they were.

Q. Were the satchels empty when Mrs. Chimel gave them to you?

A. Yes, they were free of any contents.

Q. And the boxes that the coins were in, were they also placed in the satchel, the coins remained in the boxes; is that correct?

A. The coins were in the boxes, yes. We did pick up some loose coins.

Q. And at the police station a list of the coins and items taken was given to Mr. Chimel and he signed it; is that right?

A. This is correct. It was inventoried in his presence, a duplicate copy with the use of carbon paper was made, to the conclusion and to his satisfaction at the time his property was gone through. He was given a copy of the inventory.

Mr. Monroe: Your Honor, when we concluded Friday I think I had a standing objection to this line of evidence, and may I again have that objection?

The Court: Let the record show that Mr. Monroe has a standing objection to all testimony coming within his objection.

By Mr. Enright:

Q. Mr. Del Coma, are the satchels you have referred to in the courtroom today?

A. Yes, they are.

[Tr. 307] Q. Where have you kept them since the time that you picked them up on September 13, 1965?

A. Since the day that they were impounded they were checked into evidence at the Orange Police Department.

Q. Are they here in the courtroom?

A. Yes, they are.

Q. Are they back there next to Officer Barton?

A. They are seated next to Officer Barton.

Q. They are on the seat?

Mr. Enright: Your Honor, may these two satchels be marked as People's next for identification purposes?

The Court: All right. They will be marked as Plaintiff's 11 and 12.

Mr. Enright: And, if some of the individual items are identified, counsel and I agree—we can't think of any other

way to identify—that they might be A and B under that numeral. There are quite a few different items in each, 11 and 12, in box form and loose form, and we felt if any special significance to one item arises, we might indicate that as A or B.

The Court: 11-A, for instance, or 12-B, or 12A?

Mr. Enright: Yes.

Mr. Monroe: This is agreeable, yes.

The Court: All right.

By Mr. Enright:

Q. Officer Del Coma, I will show you People's 11 For Identification, and ask you to look at it, [Tr. 308] look inside its contents, and see if you recognize it?

A. Yes, I recognize it.

Q. What is it?

A. It's a brown canvas, rubberized fabric satchel that has my mark on the bottom.

Q. Is this one of the satchels that Mrs. Chimel allowed you to use when you picked up the coins?

A. Yes, it is.

Q. And is this one of the satchels you put the coins and other materials into?

A. Yes.

Q. I wonder, Mr. Del Coma, if you could utilize the bench area, and keeping that—and open up the satchel and show the Jury what is inside of it?

The Court: Let the record show that the witness is placing the coins, or the articles from 11 For Identification on the end of the counsel table closest to the Jury.

By Mr. Enright:

Q. Mr. Del Coma, have you emptied everything out of People's 11 for Identification?

A. Yes.

Mr. Enright: May the record show, Your Honor, there are three coin boxes here, numerous coins in what appears to be plastic cylinders, various materials for showing coins, paper and plastic containers, a roll of nickels, numerous other coins in paper containers, and a brown sack that has

some writing on the outside, that we may be referring to [Tr. 309] later on?

I believe that counsel and I have agreed, in view of the fact of the number of coins, that we will just keep them in People's 11 For Identification until such time as one particular item may become important. If we identify this brown sack, we will identify it as an A or a B.

The Court: All right. That's 11, isn't it? (Indicating.)

Mr. Enright: That's 11.

The Court: 11-A.

By Mr. Enright:

Q. Officer Del Coma, I show you a——

Mr. Monroe: Forgive me for interrupting. Is 11 offered into evidence at this time?

Mr. Enright: Yes.

Mr. Monroe: No objection, Your Honor.

The Court: All right. It will be received in evidence.

By Mr. Enright:

Q. I show you a paper, brown paper folder with some writing on the outside, that we will deem to be called 11-A. Can you identify this?

A. Yes, I can. It has my mark on the back of the envelope.

Q. What is in 11-A?

A. Contents of 11-A are one or two half-size tubes which are similar to the smaller ones on the table, assorted tokens, medallions and coins, in viewing the folder.

Q. And I noticed that you have separated these from [Tr. 310] the other items. What caused the separation? what was the purpose of it?

A. As a result of the viewing of the properties in both the hand satchels, these are specific items that Mr. and Mrs. Pulati identified at the Orange Police Department.

Mr. Enright: I believe, Your Honor, that counsel and I have agreed that, if we discuss any particular item inside of 11-A, that we will try to call it by whatever it might appear to our satisfaction to be, whether it's a 1912 nickel or medallion, rather than say all the individual markings; is that right?

Mr. Monroe: I would attempt to do this, Your Honor, unless there is some specific thing which I would wish particularly identified.

The Court: If there is something you specifically wish identified, then we will call it 11-A-1.

Mr. Enright: With the Court's permission, I will place these items that were taken out back into 11.

The Court: All right. Let the record show that the District Attorney is returning all the coins and other objects in brown canvas bag, People's Exhibit 11, to the bag.

Mr. Enright: Your Honor, counsel suggested leaving it out. I just don't want it confused with the contents of 12.

The Court: All right.

Mr. Enright: Perhaps, if we leave 11's contents over [Tr. 311] to the right-hand side, furthest right-hand side of this table, we will, in taking anything out of 12, put those in the center portion of the table, if that's all right.

Mr. Monroe: If we could put 11 on this one blotter here, we've got another blotter that we could put 12 on.

Mr. Enright: Fine.

May the record show that the contents of 11, with the exception of the brown paper bag, that has been identified as 11-A, which Mr. Del Coma has before him, will be on the first blotter on the counsel table here, Your Honor, first blotter to the right, nearest to the Jury?

The Court: All right. Don't disturb Mr. Enright's cigar there.

Mr. Monroe: I wouldn't think of it, Your Honor.

Mr. Enright: Must have been an oversight on my part, Your Honor.

By Mr. Enright:

Q. Officer Del Coma, I show you People's 12, and ask you to look at People's 12, and look inside People's 12, and I will place 11-A on the blotter along with the other items from 11.

Have you looked at People's 12?

A. Yes, I have.

Q. What is People's 12?

A. I can only describe it as a simulated leather hand-carrying satchel with my mark on it.

Q. Is this the other satchel that Mrs. Chimel fur- [Tr. 312] nished to you at the time of the gathering of the coins?

A. Yes.

Q. And would you kindly take People's 12 over to the second blotter at the counsel table and empty out People's 12, please?

Mr. Enright: May the record show that People's 12 is entirely emptied out, that the contents appear to be seven boxes containing coins, and two—a red coin wallet and a black coin wallet and a single one-cent coin in a folder?

By Mr. Enright:

Q. Aside from the items that were placed in the brown paper envelope, People's 11-A For Identification, were the items in this same condition when you—or the same form when you picked them up on September 13, 1965? were they in the tubes and boxes as they are now?

A. Yes, they were, as displayed, with the exception of the items that are in the brown Manila envelope.

Q. For curiosity's sake, why the Wilkinson Sword shaving blades?

A. Recalling from my conversation with Mr. Chimel the night that these items were impounded, he had entered into some type of transaction with somebody with regard to coins, and evidently this was part of the alleged payment.

Mr. Monroe: I didn't hear the last word, that the alleged what?

The Witness: That these particular Wilkinson Sword [Tr. 313] razor blades were part of the transaction, in payment for a coin deal.

By Mr. Enright:

Q. Were the contents of these two bags shown to Mr. and Mrs. Pallati on September 15, 1965?

A. Yes, they were.

Mr. Enright: Nothing further, Your Honor.

Oh, Your Honor, may People's 12 and the contents thereof go into evidence as one exhibit?

The Court: They will be admitted into evidence as one exhibit.

Recross examination.

By Mr. Monroe:

Q. Officer, you made a search on September 13, 1965, in Mr. Chimel's home by virtue of a Warrant issued from Santa Ana Municipal Court; is that correct?

A. This is correct.

Q. And didn't you participate in another search of those premises on September 16?

A. I did not participate. I was present at the time Mr. Chimel was arrested the second time.

Q. I see. Then on September 16 you observed another search of the same premises?

A. I can't state that I observed it. I was present.

Q. Were the premises searched on September 16?

A. This is correct.

Q. Why did you get an Arrest Warrant?

[Tr. 314] A. Why did I get an Arrest Warrant?

Q. Yes.

Mr. Enright: Question is ambiguous, Your Honor.

The Court: Overruled.

The Witness: Based on the investigation arising from the matter at the Money Vault, 153 North Glassell in the City of Orange.

By Mr. Monroe:

Q. Well, the Arrest Warrant, isn't it a fact that you got an Arrest Warrant because you thought you needed it?

A. No, not actually.

Q. I see. Well, why did you get it then, if you thought you didn't need it?

A. Whenever possible I attempt to secure a Warrant prior to making an arrest; if the matter or investigation proceeds along the lines that I didn't have time to get one, I will proceed on reasonable cause.

Q. I see. Now, you talked to Mr. Ambrose regarding statements which Mr. Chimel is alleged to have made to him; is that correct?

A. This is correct.

Q. All right. And when did you talk to Mr. Ambrose?

A. I believe it was on Monday night. I believe, if my

memory is correct, that's the 16th of August, the first Monday directly after the notoriety in the paper came out concerning the Money Vault.

[Tr. 315] Q. I see. And did he at that time tell you—well, strike that.

Were you present when Mr. Ambrose testified?

A. Yes, I was.

Q. And when you talked to him on August 16, 1965, did he tell you essentially the same things to which he's testified?

A. Yes, he did.

Q. All right. And thereafter you talked to Mr. Parsons; is that correct?

A. A period of time after that, yes.

Q. Did you hear Mr. Parsons testify?

A. Yes, I did.

Q. And when you talked to him on this later date did he tell you essentially the same things to which he testified?

A. Yes, he did.

Q. When did you talk to him?

A. To the best of my recollection, it would be the latter part of August, or the first part of September. I don't recall the specific date.

Q. I believe your report indicates that you talked to Mr. Parsons on—some time shortly before September 9; would that be——

A. As I say, to the best of my recollection, it would have been the first part of September, or possibly the very [Tr. 316] tail end of August.

Q. I see. And you came into possession of what are now Exhibits 11 and 12 approximately September 28, did you not? I beg your pardon. Approximately August 28?

A. No, I did not. I came into possession of those items on the day that Mr. Chimel was arrested at his residence.

Q. I see; I see. That would be September 13?

A. This is correct.

Q. Now, before you went to Mr. Chimel's home on September 13 you had no way of knowing that what are now Exhibits 11 and 12 would be there, did you?

A. Not as to a specific item, no.

Q. What time did you arrive at Mr. Chimel's home on that date?

A. It was in the latter part of the afternoon.

Q. Did anyone accompany you there?

A. The Santa Ana detectives, working a case in their City, accompanied me, Detective Bob Moreno and Fred Gallmeister.

Q. Officer Del Coma, isn't it a fact that on that occasion you in fact first contacted Mr. Chimel in the driveway of his home and there placed him under arrest?

A. The date of my arrest?

Q. Yes.

A. No, I did not. He entered the residence into the [Tr. 317] front room portion of the house.

Q. I am sorry, I couldn't quite hear your last answer. Would you mind repeating it?

A. On the date that I arrested Mr. Chimel on the Warrant he entered the residence into the front room portion of that residence, and was shown the Warrant and placed under arrest.

Q. All right. Now, on September 13 where was your first contact with Mr. Chimel? That is to say, where were you standing when you first talked to him on that day?

A. In his front room.

Q. What about Officer Moreno, did he first contact Mr. Chimel inside or outside his house?

A. Everyone that was with me, the two adjoining officers, were all present in the front room. We had been there 10, maybe 15 minutes at the most, when he came home from work.

Q. Both Officer Moreno and Officer Gallmeister and you remained in the house? None of the three of you did at any time contact Mr. Chimel as he approached his house?

A. No.

Q. Then you showed him the Warrant and told him he was under arrest and proceeded to search the house; is that correct?

A. With the reservation that he was handed the Warrant and allowed to read the Warrant, and advised of his rights, [Tr. 318] and the search of the residence was made.

Q. What parts of the residence did you search?

A. The basic, direct search was made in the master bedroom and the room commonly referred to as the sewing room. There was a brief observation into the child's room,

a visual search in the front room, a visual search in the kitchen into several cupboards in that area, a visual, cursory search in the garage, which is attached to the residence. The bathroom was not searched.

Q. How did you miss that?

A. (No response.)

Q. There was a visual, cursory search by opening up an opening into the attic and searching it too, was there not?

A. This is correct.

Q. What happened on the bathroom? Why wasn't that searched?

A. I did not personally look in the bathroom myself.

Q. How about Officer Moreno, do you know whether or not he searched the bathroom?

A. I can't specifically say that he did not or did. I recall there was some conversation after the situation was over that they didn't find anything in the bathroom. They didn't figure there would be anything in there.

Q. I see; I see. So, would it be fair to say that you ransacked the house and garage?

[Tr. 319] A. No, it would not be fair to say that.

Q. How would you describe it?

A. As I described in my previous testimony, at the time we conducted the search we had Mrs. Chimel with us for the prime purpose of opening drawers in the bedroom, and had her arrange or slide the contents of these drawers. There was no ransack in any place throughout the premises.

Q. And I think you earlier testified that Mr. Chimel had told you that he did not want the premises searched?

A. If you wish to deem his statement as, "I'd rather you didn't," as directly telling us not to.

Q. These are his words then: "I'd rather you didn't."?

A. To the best of my knowledge, that's what I recall him stating.

Q. There aren't any other buildings on that property other than the rooms in the house you have described and the garage, are there?

A. No, this is all one building.

Q. So that would it be fair then to say that you have searched—you did search each and every structure on the property?

Mr. Enright: That assumes a fact not in evidence, Your Honor, "each and every structure on the property."

The Court: Overruled.

The Witness: As I stated before, the residence and garage are the only single structure that I am aware of that [Tr. 320] are on that property.

By Mr. Monroe:

Q. I see. All right. You returned with—. Who did you return with on September 16?

A. Officer Gallmeister and Moreno.

Q. The same officers who accompanied you on the 13th?

A. This is correct.

Q. What was done on September 16?

A. Mr. Chimel was re-arrested on their Warrant.

Q. And then the same thing was done all over again, wasn't it?

A. Not in as thorough a manner as it had been done on the day that I arrested him.

Q. The purpose of the September 16 arrest was just to pick up anything you might have overlooked on September 13; is that correct?

A. Not as far as I was concerned, because I was not——

Q. Well, what were you doing there then? Let's clear that up.

A. What was I doing with the officers on the 16th?

Q. Yes.

A. At the time our Money Vault case came into being the victim suggested Mr. Chimel as a prime suspect in the situation. Through interdepartment affiliation on many cases we discussed cases back and forth. As I proceeded with my investigation in regards to the Money Vault, and Mr. Chimel being a possible suspect, I was advised through con- [Tr. 321] versation from—I don't recall which specific officer—Moreno or Gallmeister, that they also had him listed as a potential suspect in a residence coin collection job in Santa Ana.

Q. Well, maybe I can narrow the question a little bit, Officer. You have testified that you had no connection other than perhaps as an observer with the search of September 16.

Well, if you didn't have any connection, why were you there? What were you looking for? Were you on duty?

A. Yes, I was on duty.

Q. All right. What duty were you carrying out?

A. At the time they secured their Warrant I was at the Santa Ana Police Department. As best I recall we had correlated these cases; we had held a viewing for Mr. and Mrs. Pulati on the 15th.

Q. Yes, but why were you at the residence on September 16? You said you had no connection with that search.

A. This is correct.

Q. Why were you there? What duty had you been performing?

A. I had been with Moreno and Gallmeister that day at the time they secured their Warrant.

Q. So,——

A. So I had been working cases with them.

[Tr. 322] Q. But what were you doing at the residence, Officer?

A. I was in the unit with them when they went down to place Mr. Chimel under arrest.

Q. Well now, we know you were there, but what duty were you performing?

A. I guess you'd class it as association through——

Q. In fact, Officer, you were making another exploratory search, were you not?

A. I was not.

Q. In fact, your search of September 13 was exploratory, was it not?

Mr. Enright: Your Honor, this is argumentative.

Mr. Monroe: I will withdraw the question.

By Mr. Monroe:

Q. Officer, I am not clear on one thing: In Exhibit 11 we have what appears to be six containers of razor blades, and at the time of your seizure on September 13 did you think these were evidence of something?

A. Those particular plastic cases of razors were in amongst some of the property that was picked up.

Q. Now, you wouldn't think it was unusual to find a man possessing razor blades, would you?

A. No, not at all.

Q. But you seized them anyhow?

A. They were in amongst the property.

Q. Now, on September 13 when you made the initial search you were accompanied by Officers Moreno and Gallmeister?

[Tr. 323] A. This is correct.

Q. And their case, the Santa Ana case, was pending at that time; is that correct?

A. What do you mean by "pending"? It was under investigation at that time.

Q. I see. Well, isn't it a fact, Officer, that you were accompanied by those two particular officers in order to see what they could see on your search?

A. No, it was not. Specifically, they are the residential burglary investigators for the Santa Ana Police Department, and solely the only two residential burglary investigators at that police department, at that time and at this time.

Q. I see. This was not specifically their purpose. Do you imply that this was one of their purposes, simply to get access to this house?

A. No, I don't imply. Based on the investigation they were conducting and the fact that I had him listed as a suspect and had secured a Warrant, our two cases had been correlated, since the establishment that Mr. Chimel was a suspect in fact in both cases.

Q. Now, prior to that time, prior to the search on September 13, had either Officer Moreno or Gallmeister given you any reason to think that Exhibits 11 or 12 were known by them to be at that house?

A. Not specifically, no.

[Tr. 324] Q. When a Warrant is delivered to you—strike that.

On September 13, 1965, did you have knowledge of Mr. Chimel's place of employment?

A. Yes, I did.

Q. And where was that, incidentally?

A. I don't remember the specific alphabet sequence. He was employed at a dental business in the southeast part of Santa Ana.

Q. But at that time you knew where this place of business was?

A. Yes.

Q. All right. Officer Del Coma—incidentally, am I pronouncing your name Del Coma or is it Del Como?

A. It's Del Coma.

Q. I am sorry, I have been mispronouncing it.

I'd like you to look at a document which appears to be a Warrant of Arrest in Case Number 91401 from Santa Ana-Orange Municipal Court, and state to the Jury if that is the Warrant under which you proceeded on September 13, 1965?

A. It appears to be the same Warrant. The return endorsement is signed by me.

Q. You can recognize your own signature on it?

A. Yes, I can.

Mr. Monroe: Your Honor, I think this Warrant is relevant to the case. However, I will not offer it in evidence because the Clerk of the Santa Ana Court has informed me [Tr. 325] that this gives them a great many problems.

By Mr. Monroe:

Q. Does that Warrant show—Your Honor—or——

A. Thank you.

Q. Does that Warrant show, Mr. Del Coma, when and where it was issued?

A. Yes, it does.

Q. And when and where was it issued?

A. It was issued in the Municipal Court of Santa Ana-Orange Judicial District, County of Orange, State of California. It was issued on September 13, 1965 at a given time of 10:39 a.m.

Q. When did the Warrant come into your possession?

A. At the time it was issued.

Q. At 10:39 a.m.?

A. This is correct.

Q. And what did you do then?

A. After securing the Warrant I returned to my police department.

Q. This Warrant appears to say that you are therefore commanded forthwith to arrest the above-named Defendant, Ted Steven Chimel. That means to go and get him right then, doesn't it?

A. When practical, yes.

Q. But you went back to your department. What did you do then?

[Tr. 326] A. I went to the police department, checked in the Warrant to the Warrant Detail, which is policy, and procedure at our department. The entry was made on the master card, and a Warrant had been secured, a Warrant packet was made out.

As soon as this was completed in the records section the Warrant is ready for service: except in the situation where you possibly have a suspect or fugitive that may flee immediately, or have an idea that they are about to be arrested, this particular policy is adhered to, due to problems arising out of arrests on suspicion when there is a Warrant being secured.

Q. Yes. Now, Officer, you were familiar with Mr. Chimel's place of employment, and isn't it a fact that you were familiar on that date with his hours of employment too?

A. Generally speaking, as to his employment hours, yes.

Q. And isn't it a fact that you delayed serving this Warrant until you knew he would be coming home so that the arrest could be made at his home and used as a pretense to search his home?

A. No; it is not.

Q. I see. Why did you then delay from 10:39 a.m. until—I believe you testified some time after four o'clock?

A. Yes, it was in the vicinity of four o'clock. Why did I delay? There was no particular direct delay on my [Tr. 327] part. As I just stated, whenever we secure a Warrant we are obligated to return it to our police department so the necessary paperwork may be made out to avoid a suspicion or on-sight arrest for cause when in fact there is a Warrant being secured in this manner.

Secondly, I did not serve it——

Q. Excuse me just a moment. I don't think I quite followed you on that, Officer. To avoid what?

A. An on-sight arrest.

Q. I see. Well now, are you suggesting by your answer that there was some danger that someone other than you would see Mr. Chimel while you were in possession of this Warrant and arrest him? I really don't understand what you are getting at.

A. In this particular case, no, but this is why——

Q. What were you concerned with then when you say the danger of an on-sight arrest?

A. I was not speaking directly as to Mr. Chimel's case. This is the reason for this policy and procedure at the Orange Police Department. Any time you secure a Warrant it goes to records, as I stated previously, unless the suspect is going to possibly flee.

Q. How long was this record—how long was this Warrant in records?

A. I have no way of being absolutely sure, but to the best of my knowledge, it was some time after two o'clock when [Tr. 328] I picked it up.

Q. All right. Then, what did you do from some time after two o'clock until some time after four o'clock?

A. To the best of my recounting of that particular day in question, I made several other burglary investigation contacts in regards to many other cases that I was involved in.

Q. I see. Because in that way you could then wait until Mr. Chimel got home and based on this Warrant you could search his home; isn't that correct?

A. That is not correct.

Q. You got this Warrant at 10:39 a.m. on September 13, and, if we can—now, as I understand it, your time was devoted on September 13 from 10:39 a.m. until approximately two o'clock, when Records was finished with the Warrant, your time was devoted to this case; is that correct?

A. No, it was not.

Q. Oh, I see. What else were you doing during that period of time?

A. I don't recall specific victim's names. Mr. Chimel's situation was not the only situation that I was actively engaged at that time.

Q. I see. When you went into the master bedroom in the Chimel home you had Mrs. Chimel open each drawer which you could see, did you not?

A. Yes.

[Tr. 329] Q. And when you went into the sewing room you had Mrs. Chimel open each drawer which you could see, did you not?

A. The drawers that we went into, yes.

Q. And you had her open each cabinet in that room, did you not?

A. In the—are you speaking in refernce to the sewing room or the bedroom?

Q. The sewing room.

A. In the sewing room, the best of my recollection, other than the one dresser and small metal box on the top, we opened up the closet door ourselves in her presence, and questioned her as to contents of cardboard boxes, suitcases, et cetera, on the shelf. Being that she is a lady, we offered to reach up and bring these items down.

Q. And when you went into the child's room what did you look into there?

A. We looked into the closet, which was standing open. The floor was in disarray, child's toys, et cetera. There was apparently nothing of an adult value in there, and visually didn't appear to be anything in the line of what we were looking for.

Q. Were you satisfied that you had examined everything in there, and that there was nothing concealed by a closet or a drawer?

A. As I stated, the closet was standing open at that [Tr. 330] time.

Q. I see. Then you went into the garage?

A. This is correct.

Q. What did you find in the garage?

A. An assortment of usual household items stored in the garage, what appeared to be a small dental work shop, related items to this profession, which we knew Mr. Chimel was a dental technician; couple of white household chairs, stacks of various materials, boxes, contents, several small wooden squares that had had holes put in them, and we did observe plastic coin tubes with the small plastic strip taper material with numbers, which we felt signified the last two digits of the years, which were not listed as possibly missing or stolen in either of the cases. Lawn mower, general garage items.

Q. Would it be fair to say, Officer, that you went over the garage with a fine-tooth comb?

A. No, it would not.

Q. But without going over it with a fine-tooth comb you observed all of these other items which you have just described in detail.

A. We made a general search, and many of these items

are large enough to visually see without having to become involved with them.

Q. I see. Let's go to September 16. What time did you and Officers Moreno and Gallmeister arrive at the Chimel [Tr. 331] home?

A. I don't recall a specific time. To the best of my recollection, it was in the afternoon again.

Q. And, of course, you know on that occasion that Mr. Chimel had been released on bail?

A. This is correct, yes.

Q. All right. What happened when you got to the house?

A. As I recall, we pulled up in front of the residence, went up to the front of the house, and I don't specifically recall whether I actually entered into any other portion of the house than just the front door, or if I remained on the porch at this time.

The officers made contact with Mr. Chimel, and very vaguely I remember there was some conversation. "Not again," or something to this effect.

Q. I see. Now, prior to the arrest and search on September 16, had you shown Officers, eithe or both Officers Moreno and Gallmeister the items which you had seized on September 13?

A. Yes, I did.

Q. Did they have a good opportunity to examine them? Were they able to examine them at their leisure?

A. I wouldn't say at their leisure. We held a viewing for Mr. and Mrs. Pulati, my victim, Mr. Joe Steele, Gallmeister——

[Tr. 332] Q. Your victim and Mr. Joe Steele?

A. My victim, Mr. Slocum, and Mr. Joe Steele was present at the time. I guess he is a recognized coin man.

Q. Now, Officers Moreno and Gallmeister were present at the time these coins were shown to Mr. and Mrs. Pulati and Mr. Slocum in the presence of Mr. Steele?

A. This is correct, and I was also present.

Q. Do you have any knowledge as to why either or both Officers Moreno and Gallmeister searched on September 16?

A. No, I don't specifically.

Q. I see. They just didn't have anything better to do?

Mr. Enright: Your Honor, he is asking the knowledge, and then he is making argumentative remarks back.

Mr. Monroe: I will withdraw the question.

By Mr. Monroe:

Q. As nearly as you could tell on September 16, did their search cover the same areas which had been covered by your search?

A. I can't truthfully answer that, because I wasn't present while they were searching.

Q. Where were you when they were searching?

A. As I stated previously, I don't recall whether I stepped inside the front door at the time, or if I had remained on the front porch steps. To the best of my recollection, I greeted Mr. Chimel as he came out the front [Tr. 333] door.

Q. Did you tell Officers Moreno and Gallmeister that you had searched the house thoroughly three days before?

A. I don't believe I ever at any time during this trial stated that I made a thorough search. A cursory search, yes.

Q. I see; I see.

Mr. Monroe: I have no further questions of this witness.

The Court: Mr. Enright?

Redirect examination.

By Mr. Enright:

Q. Mr. Del Coma, how many burglaries are there on an average in the City of Orange, weekly?

A. Weekly it would be hard to make an estimate. My caseload—are you speaking combined residential and commercial?

Q. Yes.

A. We could run anywhere from 40, 45 at a minimum. Some months we run as high as 80.

Q. That's a monthly——

A. A rough monthly caseload covering residential and commercial.

Q. And these people who commit burglaries, do they respect city lines? In other words, they just commit burglaries in Santa Ana?

A. Not hardly.

Q. And isn't it a practice for people who work in the [Tr. 334] burglary detail of one police department to work rather closely with the burglary detail in another police department?

A. This is true.

Q. And isn't it a matter of your experience as a police officer that people who commit burglaries more or less confine their activity to that type of crime? Strike that.

Mr. Monroe: I will object, Your Honor. It is irrelevant and immaterial in this case.

Mr. Enright: He's brought the fact that Santa Ana police officers are working Mr. Chimel's case over here.

Mr. Monroe: Well, I am sure that Officer Del Coma's psychiatric evaluation wouldn't be of much help to anybody here.

The Court: Overruled.

By Mr. Enright:

Q. Officer Del Coma, to get it more pointedly, do we refer to people as burglars because they commit that crime of burglary?

A. This is correct.

Q. And some people might be people who rob others at gun point; we call them robbers; is that right?

A. This is correct.

Q. And——

Mr. Monroe: This questioning is irrelevant and immaterial and prejudicial, Your Honor.

[Tr. 335] The Court: I think it's explanatory. Overruled.

By Mr. Enright:

Q. So you would tend to work more closely, I gather from your answers, with the burglary squad in the Santa Ana Police Department rather than the homicide squad of the Santa Ana Police Department?

A. This is correct.

Q. Both the Santa Ana case and the Orange case, in addition to being burglaries, were also coin burglaries; is that correct?

A. This is correct.

Q. And in both cases Mr. Chimel was listed as a suspect; is that correct?

A. Yes.

Q. And prior to your securing the Warrant, had you been present during any negotiations with Mr. Chimel to return the coins stolen in the B. R. Slocum burglary?

A. Yes, I was.

Q. And had you in fact been discussing this with Mr. Chimel?

A. Yes, I had.

Q. Now, Mr. Chimel's house, I take it, is a three-bedroom house; is that right?

A. Yes, it is.

Q. Ordinary tract-size property for the City of Santa Ana?

A. To my knowledge, yes.

[Tr. 336] Q. And it has one structure on it; is that correct?

A. Correct.

Q. On the 13th of September when Mr. Chimel was arrested were you in the house about ten or 15 minutes before he arrived?

A. To the best of my recollection we were only there approximately ten or 15 minutes before he arrived home.

Mr. Enright: Nothing further.

The Court: Is that all?

Mr. Monroe: One—about two questions, Your Honor.

Recross-examination.

By Mr. Monroe:

Q. September 13, 1965, Officer, how long were you at the Chimel home?

A. Best of my recollection, that's what I was making reference to Mr. Enright's question, was ten or 15 minutes prior to his arrival.

Q. No, no, I mean all together. All together, how long were you there?

A. Oh, after Mr. Chimel's arrival and he was placed under arrest?

Q. Yes.

A. I would say an estimate possibly of 45 minutes.

Q. It couldn't have been as much as an hour and a half, could it, Officer?

A. I may be off on my estimate. To the best of my recollection, I remember it being 45 minutes, possibly an [Tr. 337] hour. I don't remember it being an extended period of time.

Q. How long were you there on September 16, 1965, all together?

A. I don't think I could make an estimate. I wasn't keeping track of the time at that time.

Q. Were you keeping track on September 13?

A. Keeping track in relation to that it was my arrest, and I was trying to proceed as quickly as possible so as not to detain Mr. Chimel.

Q. How did you keep track of the time you were there?

Mr. Enright: Your Honor, this is an entirely immaterial area.

The Court: I don't see any materiality to this.

Mr. Monroe: Your Honor, the witness has testified that this was a very cursory search, and the cursory nature or not would certainly be related to the time spent there.

The Court: Sustain the objection.

Mr. Monroe: No further questions.

Mr. Enright: No further questions.

The Court: All right. You may step down, Officer.

Well it's noontime. We will take our noon recess. Now, do you, gentlemen, either of you, anticipate any motions or anything before we reconvene this afternoon?

Mr. Monroe: There is one thing which I think we can settle in a moment in chambers, Your Honor.

The Court: Well, let's start promptly at 1:30 this [Tr. 338] afternoon. We got a late start this morning. 1:30 this afternoon.

(Noon recess.)

The Court: All right. Gentlemen, stipulate the Members of the Jury are now all present and in the box.

Mr. Monroe: So stipulated, Your Honor.

Mr. Enright: So stipulated, Your Honor.

The Court: Proceed.

Mr. Enright: People call Officer Barton.

KENNETH R. BARTON, produced as a witness on behalf of the People, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Enright:

Q. Mr. Barton, I believe you gave us your full name. What is your occupation?

A. Police officer for the City of Orange.

Q. Be sure to speak up so everybody can hear.

Officer Barton, directing your attention to the early morning hours of August 15, 1965, were you so employed?

A. Yes, sir, I was.

Q. Did you have occasion on that morning to be in the vicinity of the Money Vault coin shop?

A. Yes, sir, I did.

Q. And is that located next to McLaughlin's Family [Tr. 339] Shoe Store?

A. Yes, sir, it is.

Q. Did you have occasion to go to the rear of the building that these two stores are located in?

A. Yes, sir.

Q. Did you notice anything unusual back there?

A. Yes, sir, I did.

Q. What did you notice?

A. I noticed that a padlock that normally secures a storage area next to the shoe shop was missing from the hasp, and that the storage room door was slightly ajar.

Q. I show you People Exhibit Number Three, and ask you to look at it, Officer. Do you recognize it?

A. Yes, sir, I do.

Q. What is it?

A. This is a view of the storage room door and the rear entrance to McLaughlin's Family Shoe Store, from the east alley, which runs north and south in the 100 block of North Glassell.

Q. And there is a—I believe it is an S-1 or a symbol there. Is that the door that had the padlock missing?

A. Yes, sir, it is.

Q. Approximately what time was this in the morning that you noticed the padlock missing?

A. Approximately 7:05 a.m.

Q. Did you check through the door? Did you look [Tr. 340] inside the door?

A. Yes, sir, I did.

Q. And what did you observe, if anything?

A. An interior wall had a hole kicked in it or pushed in it. Directly west of the entrance to the storage room.

Q. What did you do after observing this?

A. Well, I assumed that a burglary had been committed, and I called for assistance.

Q. Did you have——

Mr. Monroe: Object, and ask that the testimony of the witness as to his assumption be stricken.

The Court: Motion denied.

By Mr. Enright:

Q. Did you have occasion to go into the Money Vault coin shop itself?

A. Yes, sir, I did.

Q. Did you have occasion to go to the back storage area of the Money Vault?

A. Yes, sir.

Q. I show you People's Number Five, and ask if you can identify it?

A. Yes, sir, I can.

Q. What is it?

A. This would be a view of the east wall from the inside of the Money Vault—this would be the rear wall.

Q. Now, I notice some wires over the hole there. Were those wires there when you first noticed the hole?

[Tr. 341] A. No, sir, they were not.

Q. These wires were—this picture was taken some time later then?

A. Yes, sir.

Q. Were there any wires around that hole when you observed it?

A. No, sir, there were none.

Q. Was the plaster on the floor, as it is shown in that picture?

A. As I recall, there was plaster on the floor. I couldn't say that it was in this exact detail.

Q. Now, Officer, can you see this diagram over here on the blackboard?

A. Yes, sir.

Q. Do you see this D-2 with a black mark here?

A. Yes, sir.

Q. Is this the view that we are seeing, looking into the hole from this angle here, looking in this direction? (Indicating.)

A. Yes, sir, it would be. That would be this scene here. (Indicating.)

Q. And the hole that you described—well, go back, strike that.

The door that you indicated had the latch off it, or the padlock missing, was it over here where it says D-1 or POE right here? (Indicating.)

[Tr. 342] A. Yes, sir, that is correct.

Q. And did you see a hole directly through the door here in this wall where it's D-3?

A. That is correct.

Q. Officer, could you go to the blackboard—strike that.

Did you in examing the Money Vault, did you notice any alarm wires inside the Money Vault itself?

A. Yes, sir, I did.

Q. Could you go to the blackboard and show us where you noticed some wires?

Mr. Monroe: I wonder, Your Honor, with the difficulties involved, if the Jury is able to see the chart clearly?

The Court: Well, can you see all right, Members of the Jury?

The Jury (Multiple Response.): Yes.

The Court: All right.

By Mr. Enright:

Q. Will you show us where you observed wires inside the Money Vault?

A. There was one wire approximately in this area here at the entranceway into an inner room before going into the extreme back room of the Money Vault. It would be a trip wire, and as I recall, it would have been approximately ten to 12 inches from the floor. (Indicating.)

Q. Now, could you with a crayon—I believe we have one here——

[Tr. 343] The Court: Get something other than red. All right. Thank you.

By Mr. Enright:

Q. It appears to be dark blue crayon or black, would you put a line where you saw that first trip wire, and then put the letter "B" and the number "5"?

A. B-5?

Q. B-5. Indicating for the record, Your Honor, that

where he is marking or filling in that area, that is the place where the so-called trip wire was located.

The Court: All right. Let the record so show.

Mr. Monroe: Your Honor, Mr. Enright, since that appears from a distance to be a continuing of a line on the chart, would a couple little marks help to distinguish it?

By Mr. Enright:

Q. Well, if you can just show a break there so it isn't just one line?

A. (Witness indicated.)

Mr. Monroe: Thank you.

By Mr. Enright:

Q. And indicating with the same pencil where you saw the other wire, would you please—well, first show us where you saw the other wire?

A. It would have been in this area here, right at the end of the showcase. (Indicating.)

Q. Is that in the area where there is a D-4 marked in?

A. Yes, sir.

Q. Would you say the wire was in that position?

[Tr. 344] A. Approximately very close to the counter. This would be the approximate location.

Q. We will leave it stand at D-4 then. Thank you, Officer.

Did you ascertain, Officer Barton, what, if anything, was in this first storage room right where the padlock was missing on the door?

A. Yes, sir, I did.

Q. What was kept in here?

A. It appeared to be used television tubes, chassis and parts.

Q. And did you ascertain what was in the second storage room?

A. Yes, sir, I did. It was boxed shoes.

Mr. Enright: Nothing further.

The Court: Cross examine.

Mr. Monroe: Thank you, Your Honor.

Does Your Honor want these pictures up here?

The Court: No.

Cross-examination.

By Mr. Monroe:

Q. What time in the morning did you notice the lock missing from the TV storage room, Officer?

A. Approximately 7:05 a.m.

Q. Had you inspected that door at any time previous to this hour?

A. Yes, I had.

[Tr. 345] Q. When did you inspect it prior to that time?

A. Several times during the night. I don't recall the exact hours.

Q. Can you give the Jury an area of time in which you last inspected it? When I say "an area of time", for example, some time between midnight and two o'clock, or between ten and one, or whatever the case might be, can you give an area of time during which you last inspected it?

A. I can only estimate that I checked it several times between midnight and seven a.m.

Q. Is it possible that your last inspection before 7:05 a.m. was as early as two a.m.?

A. I can't give the exact hour, sir. I would estimate no.

Q. No, perhaps you misunderstand the question, Officer. I am asking is it possible, from what you have told us here, is it possible that your last inspection was as early as two a.m.?

A. My last inspection?

Q. Yes, before 7:05?

A. Again, having not kept any records of the actual times the door was checked, I could only give you an approximately, that I believe it would have been after two a.m.

Q. Well, is it possible, according to your best recollection and every record you may have of it, and doing the best we can with what we have, is it possible that it [Tr. 346] could have been that early?

A. It would be possible, but not probable.

Q. I see.

Mr. Monroe: The pictures, Your Honor?

The Court: Mr. Enright?

Mr. Enright: I returned them to the Clerk.

Mr. Monroe: Oh.

By Mr. Monroe:

Q. Officer, I show you People's Exhibit Five, a photograph. I believe you testified that at the time you entered the TV storage premises and then entered the coin shop that you did not see the wires which appear in that picture; is that correct?

A. There were no wires at that time, sir.

Q. You don't know anything about when or by whom that picture was taken, do you?

A. No sir, I have no direct knowledge as to that.

Q. And would it be fair to assume that at the time that you viewed these premises, the premises shown in Exhibit Five, that that wall was simply bare, other than having a hole in it?

A. As I recall, there were some strips of wood, such as is in the photograph here. However, there were no pictures or ornaments.

Q. I see. Then at least as this picture shows wires it is inaccurate?

A. That is correct.

[Tr. 347] Q. Did you, Officer, notice with reference to the hole which is shown in Exhibit Five, did you notice debris on the other side of this hole?

A. As I recall, sir, there was some debris. However, not a w ole lot.

Q. Referring now to People's Exhibit Eight, the chart entitled "The Money Vault," the trip wire which you observed on that morning at B-5 as marked on Exhibit Eight, what was the condition of that trip wire when you first observed it?

A. It was still intact.

Q. Now, do you happen to recall the material of which this trip wire was constructed?

A. I couldn't say definitely, sir. I have slight recall of it.

Q. Do I understand correctly that a trip wire of this sort is attached to—it's attached firmly to the structure at one end, the other end is attached to a switch of some sort?

A. Yes, sir.

Q. And on your examination of it on that morning, August 15, did you look to see if there was any appearance of either the switch or the fastening to the structure having been disturbed in any way?

A. If it had been disturbed, sir, and returned to it's on position, you would be unable to ascertain this. All [Tr. 348] I can say is that it was attached.

Q. The question, Officer, was: Did you examine it to see if it had been disturbed?

A. Yes, sir, I did.

Q. And did it appear to have been disturbed?

A. I will have to qualify the answer, sir.

Q. I think you can answer it yes or no, if you would.

A. The answer would have to be no.

Q. Thank you. And you then examined the second trip wire at D-4, shown on Exhibit Eight?

A. Yes, sir.

Q. And did it appear to have been disturbed?

A. The answer would be no.

Q. Thank you. Incidentally, Officer, can you help us with respect to the trip wire at D-4 as to the distance it was above the ground? Now, I am assuming that you probably didn't measure this exactly, but as nearly as you can recall, how far was the trip wire in D-4 above the floor?

A. I would estimate at its lowest point approximately six to eight inches, due to the fact that there was a sag in the line.

Q. From your examination and your inspection of these premises on that morning, it is true, is it not, that you were unable to determine who, if anyone, entered those premises?

A. I could not determine who had entered.

[Tr. 349] Q. And isn't it also true that you could not determine whether someone had entered, or whether someone had been inside and exited?

A. Yes, sir, I could.

Q. How would you determine this, Officer?

A. Due to the condition of the walls in question that had been tunneled through, the damage incurred, the location of debris of the walls.

Q. But you said that there was debris on both sides.

A. Yes, sir, I did.

Q. Well, then, what is it about the debris that tells you, that helps you to reach the conclusion you did?

A. One of the walls was made out of a plaster-type board, which became very minute particles on the side that the subject was going through.

Q. Well, let me interrupt at that point, Officer. You are giving us now the reasons for determining which way the person went through; is that correct?

A. Yes, sir.

Q. Well then, if we make an assumption one way or the other about which way they are going, this doesn't help us too much, does it?

Mr. Enright: Your Honor, it's argumentative. He is asking what the basis was for his——

The Court: Sustained.

By Mr. Monroe:

Q. All right. Go ahead, Officer.

[Tr. 350] A. For instance, the storage area for the television parts, that particular location was of a plasterboard type. Parts of the wall had been pushed through. Other portions had been torn inwards towards the storage area, so there was debris on both sides.

However, the initial breakage points in the wall indicated that it had been broken from a force from without, in other words, from the storage area pushing in towards the storage area of the shoe shop.

By the same token, there was debris, and the indications of the breakage points on the wall from the shoe shop into the Money Vault, the rear room also indicated that the force had been from without, rather than from the Money Vault.

Q. Now, these walls can't talk, can they?

A. No, sir.

Q. So when you say these walls indicated, how did they indicate?

A. Due to the splintered wood at some points, due to the tearing of the material that was covering the plasterboard, the manner in which the fiberboard at other points was torn.

Q. Would it be a fair summary, Officer—strike that.

Well, what is it, or what was it about the splintered wood and about the fiberboard which indicated that the initial breakage point had been from the outside in?

[Tr. 351] A. If the particular portions of walls had been pulled towards the person either gaining entry or exiting, as you suggest, the splintered portions, or the torn portions would have been on the outside. As it was, it would be a cleaner break on the outside portion of the wall, and the

torn pieces were on the inside, leading towards the Money Vault.

Q. When you speak of the "outside portion", Officer, do you mean the portion of each wall—and I am referring now to D-2 and D-3 of Exhibit Eight—the outside being the portion which is furthest from the interior of the coin shop?

A. That is correct.

Q. I see. And it is your testimony that, if someone had pulled a hole in D-2, as opposed to pushing a hole in D-2, then the wood and the fiberboard would have splintered differently? Is this a fair statement of the evidence you have given?

A. Yes, sir.

Q. Can you tell me what you base that opinion on?

A. Past experience.

Q. Then would it be fair to assume that, if I had a piece of plasterboard here in court today, that you could tell after a hole had been broken in it, you could tell whether this hole had been pushed from the one side or pulled from the other, by looking at the plasterboard?

[Tr. 352] A. If it was properly secured, as it would be in a wall, I believe so.

Q. Officer, isn't it a fact that finding a door unlocked and finding two walls with holes in them, that you really assumed that somebody had broken in, and that you are still so assuming?

A. I don't quite understand the question.

Mr. Monroe: Would you be so good as to read it back to him?

(Question read.)

The Witness: That calls for two answers, sir?

By Mr. Monroe:

Q. All right. Well, let's take the first one first. Isn't it a fact that you did so assume?

A. At that time?

Q. Yes.

A. Yes, sir.

Q. And isn't it a fact that you are still so assuming?

A. No, sir.

Mr. Monroe: I have no further questions.

Redirect examination.

By Mr. Enright:

Q. Officer Barton, when you arrived on the scene and saw the door ajar and the lock missing and the two holes, you assumed that somebody broke in the back entrance, right?

A. Yes, sir.

Q. And when you examined the wall with the portion of [Tr. 353] the edges, with the tears here—is that what you are talking about? (Indicating.)

A. Yes, sir.

Q. Common sense and experience told you that the force was through, and the breakage on the rough edges came from the force within; is that right?

A. Yes, sir.

Q. Now, Mr. Monroe indicated prior to that in a question that his discretion inferred that someone may have broken out that way. Now, using your same—you did—. You did observe the door with the lock missing?

A. Yes, sir.

Q. You didn't observe a hole through the door about where the area of the lock was, did you?

A. No, sir.

Q. And the door covered up from the bottom of the floor to the top of the doorway? There was no area where somebody could crawl underneath?

A. Absolutely not.

Q. So, your assumption was that first the lock was broken off, and then the first hole was created, and then the second hole; is that right?

A. Yes, sir.

Q. Rather than the first hole out, in spite of the physical evidence to the contrary, the second hole out, and then by some magical means getting outside, breaking the [Tr. 354] door, and coming back in and going out again?

A. That's correct.

Q. Now, you were not here when these wires that are in this picture were put up?

A. No, sir.

Q. You weren't present when that happened. There is no question in your mind those wires were not covering the hole when you observed it?

A. That is correct.

Q. And the first wire that you observed from this hole is in this area over here; is that correct? (Indicating.)

A. Yes, sir, that's correct.

Q. And there is a partition dividing these two areas right here; is that correct? (Indicating.)

A. That's correct.

Mr. Enright: That's all.

Recross-examination.

By Mr. Monroe:

Q. Officer, isn't it a fact that when you look at a piece of wallboard, such as was involved here, that the only thing you can tell from the examination of the wallboard is which direction the force was applied? You can tell whether the force was going east or west, but you can't tell which side it was applied from; isn't that a fact?

A. No, sir. You could tell from which side the force was being applied.

Q. And this would be, I take it, from the tear marks [Tr. 355] and from the splinters?

A. That is correct.

Q. Would the same thing apply, Officer, if we were concerned, for example, with a piece of paper?

A. To an expert possibly. To myself, no.

Q. Would it apply to—. Well, would it apply to a piece of plywood?

A. Yes, sir, I believe so.

Q. In other words, if I had a sheet of plywood here with, for example, a hook attached to one side, you would be able to tell from examination of that plywood whether it had been shattered by pulling on the hook or by pushing on the hook?

A. No, sir, I don't believe you could determine that.

Mr. Monroe: Thank you. No further questions at this time.

Mr. Enright: Nothing further.

The Court: All right. You may step down, Officer. Thank you.

Mr. Monroe: Your Honor, I have a very brief line of questions which I should have covered with Officer Del Coma.

With the Court's permission I would like to recall him for further Cross Examination at this point.

The Court: All right. Officer, return to the stand, please.

[Tr. 356] THOMAS H. DEL COMA, having previously been duly sworn, was recalled, and resumed the stand for further

Recross-examination

By Mr. Monroe:

Q. Let's see. You secured and executed an Arrest Warrant for Mr. Chimel on September 13, Officer. Now, isn't it a fact that you arrested Mr. Chimel and took him into custody approximately a week to ten days before that for this very charge?

A. No, sir, we did not.

Q. Is it your testimony, Officer, that at some time shortly before the arrest of September 13, that you did not arrest Mr. Chimel, remove him from his automobile at gun point near Main and Chestnut Streets in the City of Santa Ana?

A. The date in question that you are speaking with regards to, was the day when Mr. Chimel was stopped by the Santa Ana Police Department at my request, based on the situation that I was in a plain car and had no method of stopping him. The normally recognized police units painted black and white were utilized to stop Mr. Chimel.

As soon as it was ascertained who he was, he was asked to accompany us to the Orange Police Department and discuss a matter in which he had been alleged to be involved.

Q. Accompany you in your car?

A. This is correct.

[Tr. 357] Q. And the officer who stopped him did so with a drawn gun, didn't he?

A. I don't recall seeing an officer with a drawn gun.

Q. How about yourself, did you have your gun out?

A. No, sir.

Q. You are sure?

A. To the best of my recollection, I did not.

Q. So the car was stopped, he was transported from that

place to the Orange Police Department in connection with this very case?

A. This is correct.

Mr. Monroe: No further questions.

Redirect examination.

By Mr. Enright:

Q. Was it at that time, Mr. Del Coma, that Mr. Chimel was talking about the possibility of his returning the coins that he took?

The Court: During the conversation at the police department he was——

Mr. Monroe: I object to the form of the question, Your Honor. There is no evidence that he made any statement in regard to the taking of any coins. It assumes the entire point in issue. Is misconduct on the part of the District Attorney.

Ask that the Jury be admonished and assign it as misconduct.

The Court: Well, I guess it does exceed the scope of [Tr. 358] the Direct Examination. He said they took—the officer said they took the Defendant to the Orange Police Department and then I think that is where it ended, wasn't it?

Mr. Enright: I thought he had gone into the area about this very particular case.

The Court: Well, the matter has been suggested before, but I will sustain the objection.

Mr. Monroe: Your Honor, the same problem has arisen which we had with the witness Slocum on Thursday or Friday, only this time it is the District Attorney who is assuming the entire issue in evidence.

The Court: Let's see. He is your witness, though, isn't he?

Mr. Monroe: Well, it's the District Attorney's question, Your Honor, which makes the objectionable statement.

The Court: Well, sustain the objection.

Mr. Enright: Your Honor, I am not to go into any conversation; is that the ruling? I wouldn't want to ask another question concerning the conversation. He objected to the form of my question as assuming a fact not in evidence, or

something like that. I don't know what the real objection was.

The Court: Yes, I think on that basis, he is your witness, and if there are any matters that you want to go into on Direct Examination, matters that have been suggested [Tr. 359] by Mr. Monroe's questions, why, then go into it.

By Mr. Enright:

Q. When you took Mr. Chimel to the police station did you talk about the B. R. Slocum burglary?

A. Yes, we did.

Q. Did you discuss with Mr. Chimel the fact that coins were taken in the burglary?

A. Yes, we did.

Q. Was there a discussion with Mr. Chimel regarding his returning these coins?

A. Essentially the conversation centered originally directed to me by Mr. Chimel as to whether I had considered possibly the victim had created this situation for insurance reasons.

After a considerable conversation with him the conversation centered on the possible return of the coins.

Q. And who was to return the coins?

A. At that time it was not definitely labeled as to who was going to return the coins. Mr. Chimel was the only one that I had had any conversation directly with.

Q. And this conversation terminated with the possibility of the coins being returned; is that correct?

A. Yes, it did.

Q. Was there a later conversation in which Mr. Chimel appeared at the police station with another gentleman, an attorney?

A. Yes, there was.

[Tr. 360] Q. And how much later in point of time from this conversation was that?

A. To the best of my recollection, Mr. Chimel and the other two gentlemen joined myself and my partner in a conference situation on or about, I believe it was August the 30th.

Q. And where did the conversation take place?

A. Took place at the Orange Police Department in the Chief of Police's conference room.

Q. And who was present?

A. Myself, Detective Robert Ferguson from the Orange Police Department, Mr. Chimel, the gentlemen known to me as Charles Thomas Hamburger, and an attorney by the name of Jones, from the City of Torrance.

Q. Who initiated this conference? How did these people happen to be at the police station?

A. There had been conversation between Mr. Chimel and myself in regards to taking a polygraph exam, and his agreement to do so.

Mr. Monroe: Object, and ask that the answer be stricken, Your Honor. This officer knows that evidence as to a polygraph exam is incompetent, and this is an attempt to get this evidence in by way of testimony rather than presenting anything having to do with it, and I move for a mistrial on that ground.

The Court: Well, he just asked him how they came to be [Tr. 361] there.

Mr. Monroe: Your Honor, it makes little difference whether the incompetent and prejudicial evidence comes before the Jury in its full-blown form or whether it comes by way of indirect reference. It reaches the same result.

The Court: Overruled.

The Witness: Will you ask the question again, please?

By Mr. Enright:

Q. You had been in conversation with Mr. Chimel; is that correct?

A. This is correct.

Q. Prior to the conference meeting in the Chief's office?

A. Yes.

Q. Immediately prior to the conference who were you in contact with to set up this conference?

A. Mr. Jones, the attorney.

Q. And Mr. Jones was representing—. Who was Mr. Jones representing?

A. At that time Mr. Jones indicated that he was representing the suspects in regards to the matter at hand, but in my first contact through the telephone conversation he declined to name them, but indicated, "You know who they are."

Q. And was this conference initiated with the possibility of the return of the coins from the B. R. Slocum burglary?

[Tr. 362] Mr. Monroe: Objection. Leading and suggestive.

The Court: Sustained. I think he is trying to avoid your previous objection.

Mr. Enright: That's right, Your Honor. I am trying to make sure we don't get back into anything other than this specific reason for the conference.

Mr. Monroe: I think, Your Honor, if there is any problem there, the witness certainly could be admonished to answer the question and nothing more.

The Court: Well now, I don't know what to rule, whether you want me to—which way you want me to say. Mr. Enright's question is leading, but I think it is purposeful.

Mr. Monroe: My only purpose, Your Honor, is that for a ruling that proper questions be asked and that the witness confine his answers to the proper questions, and we won't have any problem.

The Court: All right. Objection sustained. The question is leading.

By Mr. Enright:

Q. Was Mr. Jones in contact with you prior to this meeting?

A. Yes, he was.

Q. Was this by phone or by coming to the police station?

A. By phone and by coming to the police department.

Q. When he arrived on the day in question were you expecting him?

A. Yes.

[Tr. 363] Q. What was his stated purpose for coming to the police station?

A. To attempt to negotiate the return of the coins in lieu of a civil release.

Q. And what did you understand "civil release" to be?

A. It was my understanding, as indicated by the attorney, that he desired to negotiate the return of the coins so that there would be no claim by the victim against the people that he represented.

Q. On that day in question the attorney arrived at the

police station with Mr. Ted Chimel and Mr. Hamburger; is that correct?

A. I had conversation one meeting with him preceding the date that he arrived with the two gentlemen.

Q. When he did arrive with the two gentlemen what was the topic of conversation that was being discussed?

A. The topic of conversation was the loss from the Money Vault.

Q. Was there any proposal being made by Mr. Jones, the attorney?

A. Yes, there was. He indicated that he felt the loss could be returned, and he requested that the victim provide him with a minute, detailed list as to each and every specific coin that was missing.

Q. During the conversation was Mr. Jones pretty much in control of the conversation that was coming from Mr. [Tr. 364] Chimel and Mr. Hamburger?

A. Yes.

Mr. Monroe: I am going to object, Your Honor. As to any statements made by Mr. Chimel at this time, this is fine. Otherwise, I think it's all hearsay.

Mr. Enright: Nothing wrong with hearsay unless you object to it.

Mr. Monroe: I just did.

Mr. Enright: Are you making an objection as to hearsay?

Mr. Monroe: Yes.

The Court: Well, Defendant was present and his attorney was present.

Mr. Enright: Puts it in a little unusual light, but——

Mr. Monroe: We don't concede that this was Mr. Chimel's attorney, Your Honor. In fact, we argue violently to the contrary, and attorney or no, it is hearsay, and if Mr. Chimel's statements, fine.

Mr. Enright: I believe, Your Honor, since the attorney was present and negotiating right in front of the police officers, with Mr. Chimel there, that it was a tacit admission on his part, as he stood there and they were talking about the return of the coins.

The Court: I think so. Objection overruled.

Mr. Monroe: Your Honor, I would make an Offer of Proof

that Mr. Jones was not then, nor at any other time, [Tr. 365] Mr. Chimel's attorney.

The Court: Well, prove it when your time comes.

Proceed.

By Mr. Enright:

Q. Prior to this conference did Mr. Jones indicate, or on that day of the conference, that he was representing both suspects?

A. The indication——

Mr. Monroe: I am going to object to the form of the question, Your Honor. The question is: Did Mr. Jones so say? As far as indicating, I think it's an objectionable question, calling for a conclusion.

By Mr. Enright:

Q. Did he say he was representing both suspects?

A. Mr. Jones indicated that he would——

Mr. Monroe: I will object to the answer, Your Honor.

The Court: What did Mr. Jones say?

The Witness: You can't answer it with a yes or no, Your Honor. If I answer it yes, without clarifying what his actual words were, it might be misinterpreted.

Mr. Monroe: I think this is what we want to know, his actual words.

The Witness: That's what I am trying to say, counselor.

The Court: All right. Now, this conversation, there might be a little doubt about what conversation you are referring to. Now, let's nail that down, Mr. Enright, time, place and persons present.

[Tr. 366] Mr. Enright: All right.

By Mr. Enright:

Q. Mr. Del Coma, the conversation we are concerned with is the conversation prior to the meeting in which Mr. Jones is talking to you about representing somebody. When did this happen?

A. Prior to the actual physical meeting in the conference room.

Q. Right in the conference room on the same day?

A. I stated prior to that date.

Q. Oh, prior to that date. And who was present?

A. At that time this was a telephonic communication between Attorney Jones and myself.

Q. And this was over the telephone?

A. This is correct.

Q. And to the question—something funny about using a telephone, Mr. Monroe?

Mr. Monroe: No, but this is so obvious hearsay, because the only person involved here is Attorney Jones, which is hearsay as to this Defendant.

The Court: Well now, I will sustain the objection.

Mr. Enright: All right.

By Mr. Enright:

Q. When Mr. Jones, when Attorney Jones arrived at the police station on the day in question did he arrive by himself?

A. As to the transportation to the department, I do not know. He was present with the other two individuals.

[Tr. 367] Q. All three individuals appeared in your department in your eyesight, in your vision, at the same time; is that correct?

A. This is correct.

The Court: Now, let's get the record clear about who these other two individuals were.

By Mr. Enright:

Q. Who were these other two people?

A. The attorney, Mr. Jones, Mr. Steven Chimel and Thomas—pardon me—Charles Thomas Hamburger.

Q. And in the presence of these two individuals what did the attorney say, if anything, as to what they were doing at the police department?

A. The substance of the conference——

Mr. Monroe: Your Honor, forgive me for continuing to object, but it's not the substance. It's the words.

The Court: All right. Near as you can recall, who said what to who? We all realize, Officer, that conversation

nearly a year ago, you can't remember the exact wording. But the substance of it as nearly as you can recall?

The Witness: The conversation at that time was in regards to negotiating the return of the stolen property from the Money Vault for a civil release on behalf of the people present.

Mr. Monroe: I ask that that answer be stricken, Your Honor. Object on the basis that it is a conclusion of the witness and tells us nothing about who said what.

[Tr. 368] The Court: Who said that?

The Witness: Mr. Jones; Mr. Hamburger entered into the conversation; Mr. Chimel entered into the conversation.

Mr. Monroe: Your Honor, this is all conclusion of the witness. We don't know who said what about anything.

The Court: Overruled.

Go ahead.

By Mr. Enright:

Q. So, if I understand you correctly, three people arrived at the police department, there was a conversation in which Mr. Jones, Mr. Hamburger and Mr. Chimel discussed the possibility of returning the coins from the burglary for a civil release; is that correct?

A. This is correct.

Q. And then was there a problem as to exact identification of the coins?

A. Yes, there was.

Q. And did the negotiations, so to speak, break down over this?

A. Yes.

Q. What was the problem?

A. Mr. Chimel stated that he had seen the coin circuit TT.

Q. What is a "TT"?

A. Teletype; that he had seen the coin circuit teletype, and informed Mr. Slocum that there were things on there which were not taken.

[Tr. 369] Q. And was this the reason that they wanted an exact listing of identification of the coins to match what was taken?

A. Yes.

Q. Was there also a request that Mr. Slocum be in a position to identify every single coin?

A. Yes.

Q. To your knowledge, at the time that you were conferring with the parties, to you knowledge, did you know if Mr. Slocum could do this, identify each particular coin?

A. He indicated that he felt he could identify the majority of his loss.

Q. Was there some problem identifying all the coins?

A. Yes, there was. He indicated that he recently purchased two small collections, and wasn't yet completely familiar with the entire contents of these collections.

Q. At this point did you mention anything like this to Mr. Chimel and Mr. Jones and Mr. Hamburger?

A. This was brought up by the victim.

Q. Was the victim present during that part of the conversation?

A. Yes, he was.

Q. And was that where the conversation ended, the conference?

A. The conference ended after a period of about two hours, still up in the air.

[Tr. 370] Mr. Enright: Your witness.

Recross-examination.

By Mr. Monroe:

Q. This conference, Officer, took place on about August 30th?

A. I believe so, yes, approximately.

Q. Did I understand you correctly that the arrest of Mr. Chimel at Chestnut and Main Street took place before this conference?

A. This was not in fact an arrest.

Q. Oh, I see. What was it?

A. After it was explained to Mr. Chimel what the situation was he voluntarily accompanied me to the Orange Police Department.

Q. I see; I see. This wasn't his idea, was it?

A. No. Originally it was mine, to make contact with him.

Q. I see. And as a matter of fact the Santa Ana officer did pull him over and stop his car, didn't he?

A. A black and white police car was used to effect the stop, this is true.

Q. And before this—. Well, for lack of a better term let us call it for the moment a detention. Before this detention you had been in contact with Mr. Chimel by telephone, had you not?

A. I don't believe so, no, sir.

Q. You knew where he lived?

[Tr. 371] A. Yes, sir.

Q. You knew where he worked?

A. Yes.

Q. And you knew what his phone number was?

A. Yes, I did.

Q. But this wasn't an arrest. Okay. That detention took place before the conference of August 30?

A. This is correct.

Q. Now, you have testified that in the conference of August 30 a list was requested from Mr. Slocum, what he had lost.

Now, isn't it a fact that at that time and place Mr. Chimel stated that Mr. Slocum had published an original list on the coin teletype, which contained certain items, and that he had then later published a larger list, which contained more items claimed to be lost?

A. I do not recall him making this statement other than the original teletype that was put out by the victim.

Q. Do you recall a statement to the effect that he, referring to Mr. Slocum, is claiming more than he put on the teletype?

A. Not as a specific statement, no.

Q. You do not recall that?

A. Not as a specific statement.

Q. Oh, how do you recall it then, if you do?

A. There, again, we are entering into general [Tr. 372] conversation amongst the group at the conference.

Q. You have already testified to a lot of that. How do you recall it?

A. That this was brought up; that he was possibly attempting to claim a larger loss than what in fact he did lose.

Q. I see. And isn't it true that Mr. Chimel's statement was based on what Mr. Slocum had put on the teletype himself as being his loss?

A. In reference to the first teletype?
Q. Uh huh.
A. The loss was reported greater.
Q. Well, it is the statement, it is the statement of Mr. Chimel with which we are concerned.
A. You will have to reask the question. I'm sorry.

Mr. Monroe: Mr. Reporter, can you read back the question, please?

(Record read.)

Mr. Enright: That an ambiguous statement, Your Honor.
Mr. Monroe: It went in without objection in the first place.
Mr. Enright: Well, I can still object to it. It's ambiguous.
The Court: Overruled. Let him answer it.?
The Witness: Based on the original teletype.

By Mr. Monroe:

Q. His statement was based on the original [Tr. 373] teletype; is that your answer, sir?
A. I am confused now with all the interjection.

The Court: Who is "he"?
The Witness: Mr. Chimel.
Mr. Monroe: Mr. Chimel's answer, Your Honor.
The Witness: During the conference indicated that he felt the victim was attempting to report a greater loss than what he had originally put out on the first teletype.

By Mr. Monroe:

Q. Fine. Thank you.
Officer, going back, how long before this conference did the detention, which originated at Chestnut and Main, take place?
A. The dates that far back are not clear in my mind.
Q. Nearly as you can recall?
A. As nearly as I can recall, it was the first part of the second week after the burglary was found.
Q. This would put it, give or take two or three days one way or the other, say, August 25?
A. Either side, yes.
Q. Now, your purpose on September 13 in getting a War-

rant was to avoid an on-sight arrest; was that one of your purposes?

A. No, it was not.

Q. I see. Was that one of your purposes in taking the Warrant to the department?

A. As I indicated in prior testimony, it is policy, with the exception of a suspect that may flee, that we have [Tr. 374] a Records procedure in regards to the Warrant.

Q. Well now, Officer, I think this question can be answered pretty simply. Was that one of your purposes, to avoid an on-sight arrest in taking that Warrant to Records?

A. No, it was not.

Q. It was not. Do you recall testifying earlier that this was one of your purposes?

A. I did not, as I recall, testify specifically in regards to Mr. Chimel. I was giving a basis for this policy and procedure at the Orange Police Department.

Q. I see. When in fact the incident—I will refer to the detention as the incident of August 25, recognizing that this may be two or three days one way or the other?

A. Yes.

Q. When in fact that incident had preceded the issuance of the Warrant?

A. This is correct.

Mr. Monroe: I have no further questions.

Redirect examination.

By Mr. Enright:

Q. Now, Mr. Del Coma, after you had this conference and you sit down with Chimel and Hamburger and his attorney in this conversation about returning the coins, you subsequently end up getting a Warrant of Arrest for Mr. Chimel; is that correct?

A. This is correct.

Q. In between the time of this conference and the [Tr. 375] Warrant did you receive information from Mr. Hamburger regarding what Mr. Chimel had indicated he was going to do with his half of the coins?

A. Yes, I did.

Q. Did you also receive some portion of the coins involved in the burglary back from some other source?

A. Yes, I did.

Q. That source was not Mr. Chimel, was it?

A. No.

Q. Was it after talking to Mr. Hamburger that you sought out a Felony Warrant? I don't mean immediately after, but was that the sequence?

A. Yes, after having made several contacts with Mr. Hamburger.

Mr. Enright: Your witness.

Recross-examination.

By Mr. Monroe:

Q. Officer, I want you to think very carefully. Did Attorney Jones at any time say to you in words or substance, "I represent Ted Chimel," or, "Mr. Chimel."?

A. You mean Mr. Hamburger?

Q. Oh, he told you he represented Mr. Hamburger?

A. No, no, I am sorry. I misunderstood what you said. I thought you were making reservation. But could I have the question back again?

Mr. Monroe: Would you read the question back, please?

(Question read.)

[Tr. 376] The Witness: No, he did not.

By Mr. Monroe:

Q. How many times, either in person or by telephone, did you talk to Attorney Jones?

A. Two or three possibly four times.

Q. And isn't it a fact, Officer, that Attorney Jones did during one of those conversations tell you, either in words or substance, that he did represent Mr. Hamburger?

A. On one occasion, yes.

Q. And it is a fact, is it not, that the coins which you have just testified to, the portion which was received from some other source, were in fact seized by Detective Salegy of the Torrance Police Department in Attorney Jones' office.

A. This is true.

Mr. Monroe: I see. No further questions.

Redirect examination.

By Mr. Enright:

Q. I didn't know we were going to get into that.

The Court: We are going to wear this witness out.

Mr. Enright: I know, Your Honor, but I think it is important to clear this up on the record.

By Mr. Enright:

Q. When Attorney Jones appeared at the Orange Police Station with Mr. Chimel and Mr. Hamburger, were you under the impression from your previous conversation with him and that present conversation that he was representing both of these people?

[Tr. 377] A. Yes, I was.

Mr. Monroe: I will object to what the witness' impression was. His testimony is in the record. His impression is immaterial and irrelevant.

The Court: Well,——

Mr. Enright: It is based on conversation with the Defendant.

The Court: Impression?

Mr. Monroe: Your Honor, it is a conclusion of the witness. He's testified to the facts.

The Court: He didn't say it was a fact. He says is was his impression.

Now, seems to me if two—I will call them suspects, arrive at Officer Del Coma's office, they have a conversation, he can tell what his conclusion was and what happened.

Now, the Jury—he isn't testifying to that as a fact, and I think it is for the Jury to determine.

By Mr. Enright:

Q. Mr. Del Coma, during that conference or prior to that conference when they walked in, Attorney Jones did not say, "I represent Hamburger, but I don't represent Mr. Chimel," did he?

A. No, he did not.

Mr. Monroe: I will object as leading and suggestive.

The Court: Sustained.

By Mr. Enright:

Q. During the course of the conference did Attorney Jones at any time make any direction, verbal [Tr. 378] directions to Mr. Chimel?

A. Yes, he did.

Q. What did he tell Mr. Chimel?

A. On several occasions during the conversation he admonished Mr. Chimel for speaking out.

Q. Told him to keep quiet?

A. Keep quiet.

Mr. Enright: That's all.

The Court: All right. Now, I am going to cut this short. You can have the last crack at it, and then it will be finished.

Mr. Monroe: All right, Your Honor.

Recross-examination.

By Mr. Monroe:

Q. The coins which were seized in Torrance were later identified by Mr. Slocum, were they not, Officer, in part?

A. Yes, they were.

Q. Mr. Hamburger was never arrested, was he?

A. No, he was not.

Mr. Monroe: No further questions.

The Court: All right. You may step down.

Mr. Enright: People call Mrs. Pulati.

[Tr. 379] Evalene Pulati, recalled as a witness on behalf of the People, and being first duly re-sworn, was examined and testified as follows:

Redirect examination.

By Mr. Enright:

Q. Mrs. Pulati, directing your attention to September 15, 1965, did you and your husband go to the Orange Police Department?

A. Yes, we did.

Q. Were you there shown some items?

A. We were shown some bags of coins.

Q. And were the coins in these two bags that we have here before us, or something similar?

A. They were.

Q. We have these bags, Mrs. Pulati, on two separate blotters here. Perhaps we will work it this way: What items were you able to identify? Will you mention them and then we will——

A. Well, there were a great many items that were identical to items that we had lost in our burglary. We were looking specifically for something that was familiar, like packaging or a box or something that we could recognize, because coins, a lot of our coins when they were lost were just laying loose in a drawer. They weren't in a box or a holder or anything, and even though they were coins in these satchels with the same dates and the same type of a coin, they were now in some sort of a holder instead of just laying [Tr. 380] loose.

Shall I go on? The first thing that I recognized—this was a rather speedy thing, and Sergeant Del Coma would bring a box out of a little satchel, and if I didn't recognize the box, he'd just open it, and we'd take a fast look at what was inside, and if I didn't recognize the specific item as having been one that we had, he would just pass over it.

But when he got about halfway through with one box out came a little brown box which I recognized as the box belonging to us, and this is where we proceeded to start identifying.

Q. Well, would you black satchel here, or the brown one and indicate what you are looking at? You are looking now at People's 12, which is the black satchel. See if you can see anything that's——

A. This is the box. (Indicating.)

Q. Now you are showing me a box on which appears to be a piece of white paper on the end here, remainder of some sort of a label. I mean just a general item.

A. Well, first of all, let me tell you why I recognized the box, because this box is not a box that you go into a coin shop and buy to put your coins into. This little box contained originally a type of a holder which I use, and which are not purchased locally here. I brought these with me from Sacramento, and I have been using them for [Tr. 381] many years. It is the only type of holder that I had ever used to

put my particular coins in, so I would recognize the box immediately.

This is not a regular coin box. If you will notice, it's a little smaller than the one you have in your hand now, and it's a little less wide, and not quite as long. It's not a standard box that you packoge coins in.

Q. These other boxes that are in this folder, (sic) are the——

A. Well, some of those other boxes are holder boxes too. They hold a specific kind of holders originally, but they didn't hold the type of holders that my box had.

In other words, it is a different brand.

Mr. Enright: For the record, Your Honor, the box that has been identified at this point is out of People's 12, and I wonder if we might have it marked later 12-A? I don't think we have anything in 12. 12-A.

The Court: That's all right.

By Mr. Enright:

Q. Do you have, Mrs. Pulati, a box similar to this?

A. I have an identical box that it has the label still on the end of it where you see the little white mark there where a label has been torn off. The box I have in court here today still has that label on it, and that little label says "Press Seal Holders".

Q. Could you get that box for us?

[Tr. 382] A. It is sitting on the bench there. There's a sample of a press seal holder in there.

Mr. Enright: I wonder if this might go in as People's next in order for identification purposes, Your Honor?

The Court: All right; 13.

By Mr. Enright:

Q. And you got both of these boxes around the same time; is that correct?

A. Well, I had had those boxes and had used—the holders when you buy these, there's a hundred holders in a box like this, and you buy. I have a number of them.

Q. And inside of People's 13 For Identification purposes I have a white object with cell——

A. That's a press seal holder. That's the trade name of that particular holder.

Q. And this is the holder used for coins; is that correct?

A. Yes. The little white tab on the outside indicates the size. In this instance it is 50-cent size, and that's the only size I ever bought. I put everything in the same size holder.

Q. And People's 12-A appears to have the remnants of a —some sort of a label here. Is this where the——

A. Well, it was my impression when I saw it in the police station that day that the little white tab had been torn off, but I recognize the box anyway because of the size of it. It's not a normal size. It's a little smaller.

[Tr. 383] Mr. Enright: May this be marked as People's Number 13?

By Mr. Enright:

Q. Now, after having recognized the box what other item

The Court: Before we lose track.

The Clerk: This box is 13. Where is 12-A?

Mr. Enright: 12-A is right here. I wanted to keep that separate. Then I would have this marked 12-A. There is no mark on it right now, Your Honor, For Identification. I will keep it out here for that purpose.

By Mr. Enright:

Q. So there is no confusion, 13 is the box that you supplied that had the press seal holders in it?

A. That's right.

Q. What is the next item that you noted, that you remembered?

A. Well, naturally when I recognized the little box we looked inside, and I had lost a box full of medals and tokens, and they were in a box like this, and there they were, inside the box.

Sergeant Del Coma took them out of a box, all the ones I could identify, took them out and put them in that little bag you have there.

Q. Did he do this in your presence?

A. Yes, he did.

Q. I wonder if you might look at—I believe we had designated this—yes, 11-A—would you look at 11-A, and look at the contents there, take them out, and whatever you [Tr. 384] can identify and why you can recognize, having a similar item, please tell the Jury.

The Court: Do you want to put the folder on this side so the Jury can see there?

The Witness: All right. Now, are we still referring to what came out of the box? because I identified everything that's here.

Mr. Monroe: I haven't seen the contents of this before. I'd like to see what's there, if I may.

The Court: Come over and look.

The Witness: Medals and tokens and there are no U.S. coins here as such except a partial roll of pennies, and there's some foreign crowns. This is equivalent of a United States dollar. The rest of this is tokens and medals.

By Mr. Enright:

Q. Beginning with the items that you recall were in the box, can you mention the item by what it is, because we have agreed to try to identify it without a number and such. Tell us what you are looking at and what it is.

A. Well, to the best of my memory, well, what was in that particular box that day was just tokens and medals, and

---

Mr. Enright: Excuse me, Your Honor. There was a question of when the Defendant would have an opportunity to look at them, so saving time, we will identify them here and later the Defendant would like an opportunity to look at [Tr. 385] the coins.

The Court: Well, it is about time to take the afternoon recess.

Mr. Enright: Fine.

The Court: Let's take it at this time. Let's reconvene ten minutes after three, Members of the Jury.

(Recess taken.)

Mr. Enright: We have everybody here but Mr. Monroe, Your Honor.

The Court: Oh, well,

Mr. Monroe: I apologize to the Court and Jury for delaying things.

The Court: All right. Stipulate the Members of the Jury are all present and in the box?

Mr. Monroe: So stipulated.

Mr. Enright: So stipulated, Your Honor.

By Mr. Enright:

Q. Now, Mrs. Pulati, you have before you a group of medals that came out of a package that we have identified as People's 11-A.

Now, would you kindly pick a coin up and describe it to the Jury, what it is, and tell us how you happen to know you had that coin, or whatever background there was.

A. All right. This is a medal on Alaska Native Brotherhood; it was issued in 1962 for just what the name implies, Alaskan Native Brotherhood. At the time I purchased this particular medal I bought two of them, because there [Tr. 386] was an old man in Sacramento where I lived who also collected medals, and I bought two of most all my medals so I could either sell or give one to him.

Now, before I left Sacramento I had re-purchased from this man all the medals that I had sold to him over the years. He knew I was leaving town. He knew I loved medals. He had had a stroke. He could no longer participate in his hobby of collecting coins and stamps and medals, so he sold me all his crowns, all of his medals and tokens.

This meant I had back medal number two, and it was a duplicate, and that's what all these particular medals here are. They are duplicates of the ones that I have in my collection.

Q. So you have a medal——

A. In other words, I have two of these. I had two of these.

Q. You have a medal just like that in your collection?

A. Now, at home, yes.

Q. And what do you call that?

A. Alaska Native Brotherhood.

Q. Native Brotherhood. Thank you very much. Will you pick out the——

A. Now, this would apply to most all of the medals that

are in here, this same story. I can identify them all, and I can pick them up one by one and tell you what they are.

This is a Canadian token, Sherbrooke Coin Exchange, [Tr. 387] 1962; it was issued by Sylvio DuTremble, coin dealer in Sherbrooke, Canada. Mr. DuTremble sends these coins only to his friends and customers, and the only way you can get one of these is to be a customer or a personal friend of Mr. DuTremble.

These are private struck, very low mintage medallions; they are not valuable at the time that they are struck, but in years to come they become a valuable collector's item. So it's something that you would want to have in your collection if you are a true collector of this sort of material.

Q. How does he spell his name?

A. It is a French name. Sylvio Du, D-u, Tremble, T-r-e-m-b-l-e. Mr. DuTremble would take it upon himself to send me two, sometimes three of these, each time he would issue one of these. He issued them in 1962, 1964, and there is also another medal here issued by him, Canada-USA Friendly token.

Q. Canada-USA?

A. Friendly token.

Q. Now, for us to—us non-coin collectors, Mr. DuTremble, when you say issued this, now, what would he do?

A. That is private issue. In other words, this is a little medallion that he had coined and minted just for himself.

Q. And people can do this; is that correct?

A. Yes.

[Tr. 388] Q. And he sent them out to——

A. You can do this as long as you don't circulate it as coin of the realm, if it's a little medallion or something.

Q. And he would send these out to his friends or close friends or customers who he knew was interested in this.

What's the next coin?

A. Now, these two little coins, these are Civil War cents, or tokens, and like all the other material lying here, they also are duplicates of what I have in my collection, and I lost three pieces of this, but there's only two of them here They are Civil War tokens.

Q. You say "cents" in the beginning?

A. Well, they are sometimes—they were used as U. S. cents. During the Civil War there was a coin shortage, and

they had to make up these little things, and they used them as actual money. They were merchant tokens in their day, but they were used as actual money in this country, because they ran out of change, kind of like we did this last year.

Q. And this is not Confederate money, or anything like that?

A. No, sir.

Q. Now, you have two—you have two, and you have two in your collection here; is that correct?

A. Well, these are two of the three. I think, if my [Tr. 389] memory—I am doing all this from memory now, but I believe on the list that was submitted to our insurance company, and which you have, this court has a copy of, you will find that there are three of those listed on there, and this is two of the three pieces.

Q. Now, give us another piece then, please.

A. This is what's called a No Tip token. It is a very inexpensive little aluminum token. You give it to a waitress if you go in and you don't like her service, don't like the way she's served you, instead of leaving her 25 cents, you leave her this little No Tip token.

The Court: Where do you get those?

The Witness: I will gladly buy a few and donate them to you.

Mr. Monroe: This clinches it with the waitress then.

The Witness: Well, I am trying to give you a little bit of the background of some of these, because I know none of you are collectors, but this is the reason behind this little token.

I bought these from the man who put them out originally, I believe it was in '62 or '63, or something like that.

By Mr. Enright:

Q. Someone originally put these out?

A. Yes, a specific man in New York, I bought them from. He dreamt up this little idea, and if you wanted some, you'd send him two or three dollars, and he'd send you—these cost 25 cents, so it's a rather—you are still tip[Tr. 390]ping. I mean it's worth 25 cents, because that is what you had to pay for it.

Q. Does it actually say "No Tip Token" on it?

A. Yes. It says, "Give nothing. Get nothing." This is what it says on it.

Q. Could I have another one, please?

A. This is—I may not get this a hundred percent right on all these, because I am just going from memory. I am not looking too close.

Colorado-Wyoming Numismatic Association medal.

Q. Colorado?

A. Wyoming, Numismatic Association medal. This was issued by that association for a convention they had there, and I believe the date is 1962. The reason for this particular medallion is that this is a replica of a very rare and valuable pioneer coin of this country.

Before we had regular coinage in this country there was what you call private issues. Different states and different companies would issue coin of the realm in their own name, and this is a replica of one of those, and I had two of them.

Q. How did you get these two?

A. This same way I got the other two. I ordered two of them. This happens to be nickel silver. The one in my own collection that wasn't stolen is sterling silver. I bought this particular one for the same old man I was telling [Tr. 391] you about, and then I bought it back from him again.

Q. Okay, fine. The next one.

A. Some of these are duplicates, so I am just kind of tossing them aside, because they are all the same thing. In other words, there's more than one piece.

Q. There's more than one piece of the "Give Nothing. Get Nothing" coins?

A. Yes, there's about five of them here. Originally I had eight.

These three pieces are foreign crowns. One is Columbia, one is Panama, and I think the other one is—yes, France. Guatemala—excuse me—Panama, Guatemala, France.

Now, these are equivalent of our silver dollars, and these, like everything else here, is a duplicate of what I have already.

Q. Are they worth a silver dollar?

A. Oh, yes. Value-wise each one of these is worth maybe $34 in American money, as a collector's item. I don't know

how much they are worth if you went in the country and wanted to spend it.

This little button right here says "Northern California Numismatic Association" on it, and it has the date. It is also a duplicate of a little button that I have. I am a member, was a charter member of Northern California Numismatic Association, and they were chartered in August the seventh, 1961. They held their first convention at the Jack [Tr. 392] Tarr Hotel in San Francisco, in September, 1962. and I was present at that convention, and was given this button when I signed in at the hotel and registered. After I had registered at the hotel as a member of the convention I was given this little button.

Now, to my knowledge the only time that the association ever gave out these buttons was the original convention that I attended there at the hotel in 1962, and this button was given to you after you registered at the hotel and were actually in the convention room, you were given this little button to wear on your convention badge.

The reason that I happen to have—I also have two of these, and the reason for that was that a friend of mine who at that time was the President of the Sacramento Valley Coin Club, we shared the same hotel room in the convention. She knew I collected buttons and badges, and she had no particular use for hers, so she gave me hers, and that meant I had two of them. I still have one.

Q. Next item there?

A. Well, this is a half a roll of Lincoln cents. They haven't been opened but the label on the outside says that they are '29-S Lincoln cents. There is a label on the top of them, but the date and all the writing has been scratched out on it. However, in spite of the fact it's been scratched out, I can recognize the writing on there as being my husband's.

[Tr. 393] Q. Is there anything on there—are you referring to the top of the ——.

A. I am referring to the top, the little label on the top.

Q. Do you recall actually what the words are there?

A. I can't make it out, but it should say "1929-S," and it should have a grading on it. In others words, a "G" standing for good, which would be the grade of the coin. I didn't look at it close enough, but if I looked at it close, I could

probably tell you exactly what it says. It should say, "1929-S", and then it should say "G" or maybe it would say. "VF", which would be very fine. It could say "VG", which would be very good. It could say "BU", which would mean brilliant uncirculated.

It is a circulated roll of coins, so if you let me see it back again, I can tell you probably exactly what it says. I didn't look at it just now to see what it says.

Q. I can see "1929-S". What is below there, if you can ——

A. Oh, it's "25", meaning 25 pieces. It's a "25". I can see it through the scratch-out. It's "25"; that means 25 pieces. That's a half a roll. 50 pennies in a roll; 25 would mean it's a half a roll.

Q. Now, had you seen this item, package like this prior to the burglary?

A. I can't truthfully say that I saw it exactly like [Tr. 394] that, because we never used that masking tape like is on that roll, but I do recognize the label, and we did lose a couple hundred rolls of pennies, including a roll of '29-S.

Q. Now, this piece of paper that seems to be over here, do you recognize that, the paper on which the writing is on top of the ——

A. Well, we had some—we had a roll of some little labels, and my husband had gotten in a store where he worked at home in Sacramento, and he was using some of these for labels on the coin tubes, and this looks like one of those labels. He had a habit of clipping off the corners a certain little way to make them fit, because they were a little bigger than the tube.

Q. And this also comes out of the package that we have identified as 11 For Identification purposes?

A. Yes. Everything here didn't come out of that little brown box. I might make that point clear. The majority of the things came out of that little brown box, but not everything that's here.

Q. But everything you have been talking about has come out of the package that for our identification purposes we have called People's 11-A, that brown bag in front of you; is that correct?

A. You mean the brown box over there?

Q. No. The brown envelope.

A. Oh, yes, sir, it all came out of this envelope.

[Tr. 395] Q. Is there anything else up there that you——

A. Well, if you wanted me to go through all these medals one by one, I can identify every one of them, but this is just so much repetition, because these are all duplicates of medals; they all came out of that little box over there. (Indicating.)

Q. All right. But there are several other medals up there that you have a duplicate of in your collection; is that correct?

A. Yes, sir.

Q. Now, in addition to the items that we have been discussing, was there anything else that you could identify?

A. Yes, sir.

Q. What was that?

A. There is a little red holder there I can identify. I don't know which bag it's in. I think it's in the black one.

Q. I have just removed two, what appear to be holders or coin wallets. At least the blue one has the words "Coin Wallet" and the red one doesn't have anything on it, from People's Number 12. Have you seen either of these before?

A. Yes.

Q. Which have you seen before?

A. I have seen both of them before.

Q. Now, the blue holder, that's——

A. Well, let me explain to you that that little [Tr. 396] holder, that little blue holder that you are holding, is a standard holder that is called a coin wallet. If you went into a coin shop to buy a little—this is for a—what—I don't know quite how to explain it. They have what they call vest pocket dealers in this business, and they take a few coins and they slip them in this holder, and they slip them in their pocket, and they show them around at the coin club in the hope that someone might want one of them.

This is the whole purpose in having a holder like this, or using it, and that's what this is.

Q. Did you have one like this missing in the burglary?

A. We lost a red one and we lost a small black one, but the red one we lost did not say "Coin Holder" on the outside of it.

Q. The black one, was it like this, about this size?

A. Yes, it was exactly like that, only it was not as big as that.

Q. I see. So this one that I have indicated that says "Coin Wallet" on it, the blue one, was not——

A. Not part of what I lost.

Q. This is a rather common item?

A. Well, that's a standard. That's the way they look when you go in and buy them, exactly like that.

Now, this little red one does not say "Coin Wallet" on it, because it wasn't a coin wallet. I had purchased it in, oh, I think 1961 or 1962 a set of 18 medallions from a [Tr. 397] company, The Gettysburg Coin and Stamp Company in Gettysburg, Pennsylvania. These were centennial medallions for the Civil War. I collect everything to do with the Civil War. And the little medallions came in this—came in a red holder like this.

I had taken them out, put them in my collection, and we had just tossed this little holder in the drawer, and it was missing, with the drawers.

Q. Now, I notice now it has coins in it. Were there coins in it when it was missing?

A. No. It was empty. There was nothing in it. I can recognize one of these coins, however, that is in here now, as being identical to one of the coins that was missing from our home that night.

Q. Which coin is that?

A. That's the 1922, '22 BU dollar. We had originally had 17 of these in a drawer, and without looking on my records, I don't know exactly how many pieces were missing as of that date, because we had sold a few of the original 17.

But all of these particular dollars had carbon spots on them. Carbon is used in the mint in a process—I don't know how they use it, but it is used somehow in there, and if they don't wash it all off on the coins, it makes black spots on them, and this makes them less valuable as a collector's item. Now, you can wash most of these carbon spots off the coin, but you can never get it all off, so it leaves [Tr. 398] a little brown mark, or a little brown—well, it would be similar to lime spots the water here makes on things, only it is a little darker in color than that, and all these dollars we had that we lost had these little spots on them, and that's

why I would recognize them immediately because of the little spots on them.

Q. Now you are referring to, for the purposes of the record, to a 1922 silver dollar, that is on the back edge, back part of the wallet, in the center, has what appears to be a dollar fifty under one corner, and "BV" up in the other corner? (sic)

A. Yes.

Q. Now, in looking at that coin you can see some of the carbon stains, if that's the word?

A. Maybe not on this particular one, but there are quite a few more of these in those bags, in one or the other of those bags. Some of them they show up much better than others.

Q. Well, can you see it on that one there?

A. No. I will have to retract that statement. I don't see it on this one.

Q. So this one you are not certain that you could identify as being—is that correct?

A. Well, I can't see enough of it to say that it is, no.

Q. Now, so the—there is no question that the red [Tr. 399] wallet was empty? Have you ever seen—before the burglary? Have you ever seen a red wallet like that since you have been collecting coins?

A. I saw Mr. Chimel using a wallet like this a couple or three months after our burglary.

Q. After the burglary?

A. Yes.

Q. Did you see him using a wallet like that before the burglary?

A. No, sir.

Q. Have you ever seen anybody else using a wallet like that?

A. No, sir.

Q. Have you ever attempted to get a duplicate wallet like that?

A. I did. I wrote to the company that sent me this, and unfortunately they have gone out of business, and I couldn't get hold of them.

Mr. Enright: May this wallet, Your Honor—it does have some coins in it—may this wallet be deemed to be People's 12-B, I believe? It came out of People's 12.

The Court: I see two marks there.

Mr. Enright: One of these items is 13 and one is 12-A. This should be 12-B.

The Clerk: For Identification?

Mr. Enright: For Identification. Your Honor, at this [Tr. 400] point we would offer all the items that were in People's For Identification Number 11 and People's Identification Number 12 into evidence as items picked up at Mr. Chimel's house, withthe understanding that some of which obviously are not being identified by this witness.

Mr. Monroe: On this specific understanding, Your Honor, no objection.

The Court: All right. They will be received in evidence, 11 and 12.

Mr. Enright: Could this be received as a separate—as an inclusive—oh, no, we will just keep it for identification purposes, Your Honor. We put 11 and 12 in, and mark it for identification. That's all.

By Mr. Enright:

Q. In addition to the red coin wallet is there any other item that you specifically can identify?

A. There are many of the same items, but the way they are packaged was not identical, so I couldn't identify them 100 percent.

Q. Now, I believe that you indicated that the numismatic value of the lost property was $2541.62, at least that's the——

A. Yes.

Q. —what the insurance company paid, and that's your itemized list? Were many of these items in the category of your last statement, coins that you have no immediate, specific identification other than you had these coins? [Tr. 401] No—it was either a 1922 silver dollar, and I assume a 1922 silver dollar is a silver dollar, so to speak?

A. Well, when you get into the type of coin that we lost was pretty well circulated. In other words, what we lost were, for the most part, were our lesser grades of coin, and they were well circulated, and a well-circulated coin is just a well-circulated coin. I don't think you can tell one from the other.

If you change the packaging—if you take it out of its original carton, it's just another coin.

Q. Well, we had these items divided into the two bags here. Do you think that you can find that——

A. I would say that probably 90 percent of the coins in those bags would agree with the dates and the conditions of coin that we lost, but it's not packaged exactly the way it was when it left our home. It's been put in different tubes, or it's been put in different boxes.

Mr. Monroe: Object, and ask it be stricken as a conclusion.

The Court: I don't believe so. Overruled.

Mr. Monroe: That assumes it was taken from her home.

Mr. Enright: I think his objection is as to "put in different tubes and put in different boxes."

Mr. Monroe: Your Honor, she assumes that articles which she has not identified were taken from her home and were in fact repackaged, but she's not testified to this, so [Tr. 402] it has to be a conclusion of the witness, assuming, really making about four different assumptions.

Mr. Enright: Maybe I will strike that and——

The Court: All right. The answer and the question both may go out.

By Mr. Enright:

Q. You had an opportunity to look into People's—look at the items in People's 11 and People's 12, had you not, at the police station?

A. We were looking for something specific that morning. We were looking for packaging that was identical to what left our home. Some of the items we really didn't even look at because the boxes or the tubes weren't exactly like what we had, so I didn't get to see what was in them. I don't know what was in some of the tubes and things.

Q. You have indicated that 90 percent of the items that were here were similar to the items that you lost?

A. Yes.

Q. In age of coin, type of coin and such?

A. Yes, uh huh. Well, we lost so many different things: we lost hundreds of rolls of nickels, and there were a lot of rolls of nickels there, but I didn't pick up every one of these rolls of nickels that Del Coma had at the police station that morning and check it out. There was no reason for that, be-

cause a roll of nickels is just a roll of nickels unless it had my name on it or something.

Q. And you did see some of these silver dollars that [Tr. 403] you talked about with the carbon marks on it?

A. Yes, sir. There are some in there.

Mr. Enright: Your witness.

The Court: Before you start in, now, who is the Juror that is anxious to get away?

Juror Number 12: Here.

The Court: What is the nature of your——

Juror Number 12: I had an interview scheduled with an individual at four, 4:15.

The Court: Where?

Juror Number 12: Autonetics, where I work.

Mr. Enright: I have a feeling, if it helps, Your Honor, that perhaps Mr. Monroe would substantiate this; that he might be longer than our ordinary quitting time with Mrs. Pulati anyway.

Mr. Monroe: I would anticipate it, Your Honor. I would anticipate a fairly extensive Cross Examination.

The Court: Well,——

Mr. Enright: What I am getting at—I am guessing—I think she would have to be back tomorrow morning anyway.

The Court: All right. Go ahead.

Mr. Monroe: All right.

Recross-examination.

By Mr. Monroe:

Q. Mrs. Pulati, in order that we may try to go a little more quickly and in order that I don't grate on your nerves, if you will, try to confine your [Tr. 404] answers just to the question I put. I will try to make my questions very clear and very specific so that we can move right along.

A. All right.

Q. Now, the—. First of all, you mentioned vest pocket coin dealers. Would you classify Mr. Chimel as a vest pocket coin dealer?

A. Oh, very definitely.

Q. Then it wouldn't be unusual for him to have a coin wallet?

A. Oh, no.

Q. And had you seen Mr. Chimel with a coin wallet prior to February second, 1965?

A. One coin wallet.

Q. Turning now to the medals and tokens, aren't these known as fantasy coins?

A. That's one name for them.

Q. And as compared to, for example, rare United States coins, these medals and tokens are of a very limited value, are they not?

A. Oh, no, sir. You could have one that might be worth as much as 15, $20,000, if it was something very unusual and very rare.

Q. Of those medals or tokens in Exhibit 11-A which you have identified—I am sorry, I am losing track of the number of the exhibits—in 11-A which you have identified, [Tr. 405] do you have any particularly valuable token in there?

A. No, I don't think so. There are a couple of what are, so-called dollars that are in there that I think I charged the insurance company a dollar and a quarter for them. I have since found out they are worth 17.50 apiece.

Q. Now, when you originally reported this loss to the police you didn't report any medals or tokens missing, did you?

A. Are you referring to the night I gave the—the officer was at our home?

Q. Yes.

Mr. Enright: Your Honor, we have gone into this; it's been asked and answered.

The Witness: He didn't ask for an itemized statement, or anything like that. He just, as I recall it, two gentlemen,——

Mr. Monroe: Well, I think there is an objection before the Court, Mrs. Pulati.

The Witness: Okay.

The Court: Cross Examination. Overruled.

By Mr. Monroe:

Q. The question was: Did you report that to the police, the loss?

A. I honestly can't remember.

Q. Now, do I understand correctly that you were aided in

identifying these by the fact that they were in a little brown box, Exhibit 12-A?

[Tr. 406] A. Well, the box was the first thing I recognized as being something familiar.

Q. Then did that aid you in identifying the medals and tokens?

A. Not necessarily, no. Just the box looked familiar, so he opened it up, and we seen the contents. Some of the boxes we never even opened. If a box didn't look familiar, we didn't even bother with it.

Q. I see. But this Box—let me put it this way: The box which was at your home on February second, 1965, was not in the same condition as this box when you saw this box on September 15 or thereabouts; isn't that true?

I think that could be answered with a yes or no, if you would, please?

Mr. Enright: Why don't you wait for her to answer?

Mr. Monroe: I am.

The Witness: I am not quite sure I understand the question. I lost a brown box full of medals and tokens.

Mr. Monroe: Excuse me. Could you reread the question?

The Witness: I know what you said. It is I am not sure that I understand what you are getting at. I lost a brown box of medals and tokens.

By Mr. Monroe:

Q. Yes, this much I understand, Now, this box here was seen by you at the Orange Police Department on September 15; is that correct?

A. Yes, sir.

[Tr. 407] Q. Was this box in the same condition when you saw it on September 15 as was the box which you lost on February second?

A. Basically, yes.

Q. Well, what do you mean "basically"?

A. Well, it could have been a little—well, I don't know what you are driving at, so I don't know really what you mean.

Q. Did it look exactly the same?

A. Well could have been a little more worn, or could have been a little shabbier, perhaps.

Q. Well, was it?

A. I have so many of those brown boxes that I don't know what each one specifically would look like. Some of them are rather worn, and some are rather new-looking.

Q. Then this particular box could have been one of many?

A. Not one of many that were lost, but it could have been one of many that I had, and I wasn't really sure which box was in that drawer. In other words, it could have—

Q. I see. Now, in 12-B, the red coin wallet, would you like to have it before you?

A. No, I don't need to see it again.

Q. You referred, I believe, to a peace dollar in the coin wallet?

A. Without looking at it, when I saw it here, I [Tr. 408] referred to it, yes.

Q. Now, this was a—was that a 1922 peace dollar?

A. 1922 peace dollar.

Q. And was it any particular type, an S or a D or——

A. I didn't look at it to see if it's an S or a D.

Q. Would you like to look at it?

A. If you want me to. You have to take it out of here and look at it, because the mint marks are on the back.

The Court: I think the Court will approve looking at it.

The Witness: It doesn't have a mint mark, so it's just a 1922 peace dollar.

By Mr. Monroe:

Q. That's a very common coin, is it not, Mrs. Pulati?

A. Well, yes.

Q. I think you have referred to a Guide Book of United States Coins as a reliable authority, and would you say it was mistaken in showing 51,737,000 of those coins minted?

A. In the year they were minted, that's correct.

Mr. Enright: Your Honor, this is improper questioning. He asked: Is it a common piece? She said, "Yes." And he starts reading from a book.

Mr. Monroe: I asked her if this was an error.

Mr. Enright: It's immaterial and irrelevant whether the book is in error. Nothing to do with this burglary.

[Tr. 409] Mr. Monroe: I assume this evidence was with-

drawn for something. If you want to withdraw the evidence, fine.

Mr. Enright: Not the evidence. The red wallet was offered, because it was part of a burglary. You are dealing with a red book, which you asked the witness whether it was an S or a D, and we find out it was neither. I am sure you must have looked at the coin before you asked the question.

The Court: I think we might as well get along, because I doubt if she has any personal knowledge whether there's 20 or 30 million of them.

By Mr. Monroe:

Q. Mrs. Pulati, there is one point that I am not altogether clear on, and forgive me for going back to it.

The dealer in Sacramento from whom you obtained a number of the tokens, how did these tokens, if you know, how did these tokens come into his possession in the first place?

A. Now, I didn't testify that I obtained any tokens from a dealer in Sacramento.

Q. Well, I may have misunderstood. Could you tell me

A. Are you referring to the gentleman who collects these that I bought them for?

Q. Yes.

A. Either I would buy two of an issue and give one to him, or he would buy two of an issue and give one to me. In other words, I would have in my collection, and he would [Tr. 410] have in his collection one of these.

Q. I see. How long did this arrangement go on?

A. Oh, this has been going on for possibly three years.

Q. And then through that system your collections would always be precisely the same? He would have the same thing that you would?

A. Well, on occasion he'd buy something that I wasn't interested in, and I'd tell him so, and he wouldn't even buy it, or vice versa. When I'd be ordering something—this gentleman, you have to remember that this gentleman had a stroke, and I did all of his personal secretarial work.

Q. I see.

A. So I was the one usually that was writing the checks,

be it my check or his check, for these orders, and this, it was a rather close association.

Q. What was his name?

A. Mr. H. C. Stillwill.

Q. And then when did you buy his collection of tokens and medals? Or am I correct in understanding that you did buy them?

A. I did.

Q. When did you buy them?

A. Shortly before I left Sacramento. I believe it was probably around December of—I will have to stop and think—if I had my records here, I could tell you exactly when I bought it, but from memory I'd have to say it was [Tr. 411] maybe six months before I left Sacramento.

Q. And what year was this?

A. This would have been 1964.

Q. Fair estimate would be December of '63?

A. No, of '63.

Q. December of '63?

A. I left Sacramento in June of '64.

Q. Approximately how many medals was that that you purchased from Mr. Stillwill?

A. 150 pieces.

Q. I see. Let's see. Do you have the contents of 12-A before you——

A. I put them back in the envelope.

Q. All right. Don't take them out; don't take them out.

11-A. With reference to 11-A, how many coins and medals, as nearly as you can tell, in an offhand glance, are there?

A. This is just a guess, because I never counted them. I'd say maybe there's 35 pieces in here.

Q. And isn't it true, Mrs. Pulati, that—strike that.

Now, prior to February second of 1965 had Mr. Chimel ever expressed an interest in medals or tokens to you?

A. Mr. Chimel was not interested in medals and tokens.

Q. The medal struck for Mr. DuTremble, do you know how many of those were struck?

[Tr. 412] A. Yes.

Q. How many?

A. I'd have to look in my literature. I don't know all this by heart, because this involves about—well, I don't know if

what's in here involves more than two different issues, but my own collection involves about four different issues. Some of them there's only a hundred. Some of them there are 500. I think the most of any would be around 500 pieces.

Q. I see. And did I understand that Mr. DuTremble sends one of these to each of his customers?

A. That's right.

Q. What is Mr. DuTremble's business? Is he a coin dealer by mail, or something of that sort?

A. He owns and operates the Sherbrooke Coin Exchange in Quebec, Canada.

Q. Have you seen others of his medals other than the ones which have been in your collection?

A. No, I haven't.

Q. Mrs. Pulati, you have seen a number of red coin wallets with some sort of printing on them, have you not?

A. I have never seen a coin wallet that didn't say "Coin Wallet" except this little red holder I have.

Q. Well, Mrs. Pulati, you have seen a number of red coin wallets with printing, have you not?

A. I don't recall that I have. They are usually black.

[Tr. 413] Q. All right. Have you seen a number of red coin wallets?

A. No, sir.

Q. No? You were attending at the time, February second, and I assume still attending the meetings for the most part of three coin clubs?

A. Yes, sir.

Q. And in these meetings don't you see coin wallets in use?

A. Occasionally. I have never seen a red one.

Q. I see. Do you go to——.

A. I will add one more thing to that: I have never seen a red one, except this one in Mr. Chimel's possession.

Q. Do you go to various coin shops from time to time?

A. I enter one occasionally.

Q. And you have never seen a red one there?

A. I don't recall that I did.

Mr. Monroe: No further questions, Your Honor, at this time.

Mr. Enright: Nothing further, Your Honor.

The Court: All right. You may step down. Thank you.

Mr. Enright: Are we going ahead, Your Honor? I have a short witness.

The Court: I don't know. I am very reluctant to recess. This trial is going awfully slow, and I sure want to get it disposed of tomorrow. On the other hand, if this is [Tr. 414] really vital to you, you are a young man, does it have to do with your employment?

Juror Number 12: Not mine. I have an applicant for employment.

The Court: Don't you think if you told him the Judge was cross, and so forth, that they would forgive you for ——

Juror Number 12: I am sure he'd understand.

The Court: All right. Let's let him understand then.

Call your next witness.

Mr. Enright: I only have one other witness in the courtroom here, Your Honor, anyway.

The Court: All right.

Mr. Enright: Mr. Pulati. Mr. Pulati has been previously sworn.

Vito Louis Pulati, produced as a witness on behalf of the People, having previously been duly sworn, was recalled for further:

Redirect-examination

By Mr. Enright:

Q. Mr. Pulati, I believe that you have before you, or should have a brown envelope that says "People's 11-A" on it?

A. Yes, sir.

Q. Would you open it up, please?

A. Certainly.

Q. There should be a roll of pennies in a plastic tube?

[Tr. 415] A. Yes, sir.

Q. Mr. Pulati, do you recognize this item?

A. I recognize my printing, definitely.

Q. Now, are you looking at the top of a white, square——

A. I recognize the label that I received while working at Bonne and Gordon, which is a label that is used in the retail

clothing store, and the ones they use today and have been for a number of years have the printing of their respective store, whether it may be Bullocks', Buffums' or whatever. In this case this is a very old label which we never used any longer. The boss gave me the whole roll, and I use them to that advantage.

If you will notice that I even clipped the edges off which had, being a little more fussy, rather than have them overlap, but I definitely recognize the label, and my printing without a doubt. Inasmuch as it's been scratched out, it's still very legible, and I certainly recognize it as being mine.

Q. And is it your practice to utilize these blank labels on the top of tubes of coins?

A. For years I did that until later we began buying them in coin shops where they are absolutely round, and that is what you saw all collectors and dealers use, the round ones, that are for sale at the coin shops.

This is not an item that is purchased in a coin shop at all, this type of label.

[Tr. 416] Q. Where would this label be on a men's suit?

A. It could be on a suit; it can be on shirts; it can be on socks, or on anything.

Q. What is it usually for?

A. Price, code and department, because in all stores everything has their various departments, and this was placed on the joker ticket, or whatever, depending on the—for instance, a pair of socks, the regular label, it would be placed on that. Naturally you don't stick it on the garment itself.

Q. And how did you attach it to the cylinder? Was it glued on?

A. It's just like your labels today as far as the back goes. You pull the paper off of the back and it has a tendency to adhere to it. They are all made the same way as far as the backing is concerned. You tear off the back and it stays on.

Q. There is some adhesive material on it?

A. That's correct, that's the word I have been fumbling for.

Q. What business are you in right now?

A. I am still in the clothing business, sir.

Mr. Enright: Nothing further.

The Court: Cross Examine.

Recross-examination.

By Mr. Monroe:

Q. May I see the roll of pennies, Mr. [Tr. 417] Pulati?

A. Certainly, right here. You can see the printing is visible.

Q. Is there anything about this roll of pennies which identifies it to you, Mr. Pulati, other than the fact that it has an adhesive label attached to it?

A. No, more important that that, as I stated earlier, that I definitely, very definitely recognize my printing. As far as the coins go, I haven't opened this tube, but I do know that we had a partial roll of this particular date, and that was submitted to the insurance company at the time of the loss.

Q. But am I fair to assume that, if that label were removed, then you would not be in a position to distinguish this roll of pennies?

A. I am sure I couldn't distinguish circulated coins. I doubt very seriously if anyone can.

Q. Yes. Referring back to February second, did you have any medals or tokens packaged in a container of this nature?

A. In a plastic container of this nature?

Q. Yes.

A. To my knowledge, no, because we—for the most part all of my wife's medals—and these are my wife's medals with the exception of this—that is hers anyway, I gave her —these are all quite large, and they were all [Tr. 418] quite large, and they were all either loose, or for the most part packaged in the two by two holders, or whatever size you would call that.

Q. I see. So then the answer would be that you did not have any plastic rolls of tokens or medals, as far as you know?

A. That is correct, as far as I know.

Mr. Monroe: No further questions.

Mr. Enright: Nothing further.

I believe at this time, Your Honor, the People would rest, subject to any situation that counsel and I have discussed, permission to recall a witness out of order.

Mr. Monroe: Yes, Your Honor. I don't know what the—

well, this is perhaps something we can discuss with His Honor in chambers.

We do have this one matter which perhaps is deserving of Your Honor's consideration in chambers.

The Court: All right. You may step down, Mr. Pulati.

The Witness: Thank you.

The Court: Well, we will recess until 9:30 tomorrow morning. I am surely hoping to get this case wound up tomorrow, 9:30 tomorrow morning then.

[Tr. 419] Santa Ana, California—Tuesday, July 12, 1966

(James G. Enright, Assistant District Attorney, appeared as counsel for the People.)

(Keith C. Monroe, Attorney at Law, appeared as counsel for the Defendant.)

(Honorable David D. French, Judge Presiding.)

(William R. Macauley, C.S.R., Official Court Reporter.)

The Court: Good morning, Members of the Jury.

Stipulate the Members of the Jury are all present and in the box?

Mr. Monroe: So stipulated, Your Honor.

Mr. Enright: So stipulated, Your Honor.

The Court: People versus Chimel. Proceed.

Mr. Enright: Yes, Your Honor. People at this time would like to recall Mrs. Pulati to the stand. Mrs. Pulati.

The Court: Mrs. Pulati has already been sworn.

Mr. Monroe: In the interest of expediting matters here, the Defendant would be prepared to at this time stipulate that the coins and tokens contained in Exhibit 11-A were present in Mrs. Pulati's home on February second, 1965.

The Court: Were present in Mrs. Pulati's home on February second. Now, is that agreeable to you, Mr.——

Mr. Enright: Oh, yes, Your Honor.

[Tr. 420] The Court: All right then, stipulation will be accepted.

Mr. Enright: We don't need you, Mrs. Pulati. Thank you.

At this point, Your Honor, subject to taking a witness out of order, the People would rest. There is a witness en route that we can take later.

The Court: All right. People rest.

Proceed, Mr. Monroe.

Mr. Monroe: Defendant will call Mr. Morris Diehl

Morris Diehl, produced as a witness on behalf of the Defendant, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Monroe:

Q. Where do you live, Mr. Diehl?

A. 426 Main Street in El Segundo.

Q. What is your occupation, sir?

A. Well, I was a coin dealer.

Q. I see. During what period of time were you a coin dealer?

A. From June, 1964, until this month.

Mr. Enright: Until when? I didn't hear the last part.

The Witness: Until July, this year.

By Mr. Monroe:

Q. Mr. Diehl, I show you Exhibit 11-A which has been entered into evidence in this case, and ask you to examine the contents of that exhibit. Have you had [Tr. 421] an opportunity to examine the coins in 11-A, Mr. Diehl?

A. Yes.

Q. Excuse me. I think I mistakenly referred to those as coins. Medals and tokens and coins. Do you recognize any of the contents of that exhibit?

A. A few of these.

Q. Specifically, Mr. Diehl, which ones do you recognize?

A. This Panama crown here and this Civil War token and a few of these medals.

Q. When was the last time you saw them?

A. I think it was either February or March of 1965.

Q. And where did you see them?

A. At Coinarama City in Hawthorne.

Q. I see. Will you describe for the Jury the circumstances under which you saw them?

A. Well, I was out there and I was selling coins, and this fellow came around and he was selling these things, these medals and all, and he asked me if I wanted any, and I just come down there to sell stuff so I just told him I didn't care for them.

Q. I see. Now, do you know who this person was who offered them for sale?

A. No. I don't think I have ever seen the man.

Q. All right. All right. Now, can you describe for the Jury the general operation of Coinarama? What type of [Tr. 422] business is it, and what's done there?

A. Well, everybody, all the coin dealers come down there and they buy a table for $3, and you get to stay there until

ten o'clock on Wednesday nights, and you sell your coins there, and you can buy whatever anybody wants to sell you.

Q. I see. Then this is something in the nature of a place of general exchange where one dealer will exchange things with another?

A. Yes.

Q. Buying and selling.

On the occasion to which you refer in February or March of 1965, did you observe Mr. Chimel at any time, seated to my left at the counsel table?

A. Yes.

Q. Where did you observe him?

A. He was at the table right next to mine.

Q. I see. And after this other person offered the medals and tokens which you have identified to you, do you know what became of them?

A. Well, he went to Mr. Chimel's table and he sold them to him.

Q. I see. Is there anything which this—this was a long time ago. This was about a year and a half ago—is there anything which helps to fix this in your memory?

A. Well, I had sold him some coins.

[Tr. 423] Q. When you say "him", to whom do you refer?

A. To Ted Chimel. And he was going to pay me then, but he told me, he said that, "I just bought these coins"—I mean, "these tokens and medals, and you have to wait until tonight before I can pay you" for what I had sold him.

Q. I see.

Mr. Monroe: I have no further questions.

Cross-examination.

By Mr. Enright:

Q. Mr. Diehl, how long have you known Mr. Chimel?

A. Well, I haven't known him too long. I have seen him every once in a while. I just, when I got the Subpena I didn't even know who Ted Chimel was until just a couple weeks ago.

Q. Well, how long did you know him in February or March of 1965?

A. Well, he was—I didn't know him by name, but he was set up next to me a couple times in Coinarama City.

Q. How many times in 1965 did you go to Coinarama City?

A. Every week.

Q. You went there every week?

A. Yes.

Q. You purchased a table for $3 every week; is that right?

A. Yes.

[Tr. 424] Q. How many times did you see Mr. Chimel there in 1965?

A. A few times. I don't really know.

Q. This is a pretty active situation up there in Coinarama, isn't it? quite a few people coming in and out, selling coins?

A. Yes.

Q. Now, you say you saw a Panama crown?

A. Yes.

Q. You can't say whether that was the Panama crown, can you?

A. Yes. I recognize these dents on the edges and all.

Q. Just looking at it that one time you can recognize the dents on the edges?

A. Yes.

Q. Where are the dents on the edges?

A. Right around here, big gouge on the back, and there is a lot on the edges on the front. (Indicating.)

Q. Have you ever seen coins with dents on edges before?

A. I think it is the first one I have seen with one of these like this.

Q. How old are you, Mr. Diehl?

A. Twenty.

Q. A year and a half ago you were 18 and a half; is that right?

A. Yes.

[Tr. 425] Q. You say this fellow came around you never saw before?

A. No.

Q. He put some medals in front of you and you didn't want to buy them; is that right?

A. Yes.

Q. Why? don't you collect medals?

A. No, I was—I went down there just to sell stuff. I didn't want to buy anything.

Q. Do you collect medals at all?

A. No.

Q. You can recognize a medal the moment it is put in front of you as being different from a silver dollar or so, can't you?

A. Yes.

Q. This fellow went over to the booth, or the stand next to you and spoke to Mr. Chimel; is that right?

A. Yes.

Q. Did you engage in their transaction? Were you busy in their transaction?

A. No.

Q. After he talked to Mr. Chimel Mr. Chimel told you he just bought some medals from this person; is that right?

A. Yes.

Q. Did you know Mr. Chimel to be interested in medals?

A. I didn't know what he collected or what he bought.

[Tr. 426] Q. Were you aware at that time that Mr. Chimel was under suspicion for burglarizing a home that had these very medals in them?

A. No.

Q. Or medals like this?

A. No.

Q. How many times since February—since June, '64 to July of '65 when you were a coin dealer have you gone up to Coinarama City?

A. Well, quite a few times. I used to operate the snack bar in there, from October of '65 until June of this year.

Q. And what is "quite a few times"?

A. Every day.

Q. Every day?

A. Right.

Q. Did you remember this particular occasion by yourself or did Mr. Chimel get in touch with you and remind you?

A. Well, I remembered the particular incident, because he had told me then that—I was selling stuff, and he had told me then that I would have to wait to get paid until he sold some more stuff, because he had just bought some.

Q. Did Mr. Chimel get in touch with you about testifying today?

A. Well, they gave me a Subpena to come down.

Q. And you immediately remember what it would be for, [Tr. 427] February of '65 on that one occasion that you were next to him?

A. Well, at that time I was buying these particular coins, so I say only two months, like, that I was selling this particular coin that I sold him.

Q. But it had to have some significance. Somebody must have told you that it had to be a medal. You bought silver dollars, didn't you? and you bought other coins up there, didn't you?

A. Yes.

Mr. Monroe: I will stipulate, Your Honor, that I interviewed this witness last night preparatory to his appearance in court today.

Mr. Enright: Thank you very much.

By Mr. Enright:

Q. I am interested in when Mr. Chimel talked to you about this very case.

A. All he told me was that I would have to go to court to —he was—his attorney would give me a Subpena to go to court for him.

Q. And he didn't tell you what it was going to be about?

A. He said it was something about a burglary.

Q. Just something about a burglary?

A. Yes.

Q. And you were going to come to court and testify to something about a burglary?

[Tr. 428] A. Well, just to testify that he had bought these medals and tokens.

Q. Oh, he told you to testify that he had bought the medals and tokens?

A. Well, he did.

Q. Did you see the money change hands?

A. I saw these medals and tokens—the fellow come around and asked me, and I said I couldn't use them, and then the next thing I know he had them, he had bought them.

Q. The next thing you knew he had them?

A. Yes, he bought those.

Q. How do you know he bought them?

A. Because first he was going to pay me, and he didn't. Then when he bought these he didn't have any money.

Q. He told you he bought them; is that correct?

A. Yes.

Q. You were busy with your own coins on the other side, in front of you; is that right?

A. Yes.

Q. And even though you are not interested in medals or wouldn't be interested in buying them, you still examined these medals; is that correct?

A. Yes. Well, there's a few of them, there's this Civil War token here, I was interested in that.

Q. Oh, you were interested in it?

A. Yes. But he wanted to sell all of it, and I just [Tr. 429] told him I just didn't want them all.

Q. I thought you indicated you just went up there to sell your own coins, and that you weren't interested in medals?

A. This isn't a medal. This is a Civil War token. It's sort of like a—well, they used it for change in those days, in the 1860's, and all, private individual, private companies would put those out, and they'd be used as a medium of exchange, and all.

Q. And in February or March, 1965, you were not aware of Mr. Chimel being involved in any burglaries?

A. No.

Q. When people sell coins up in this Coinarama they don't pass receipts back and forth, do they?

A. No.

Q. This is a cash basis?

A. Yes.

Q. Has it been your experience or knowledge that some stolen property is sold up there under these circumstances?

A. I wouldn't know.

Mr. Monroe: Object, Your Honor, as beyond the scope of the Direct.

The Court: Overruled.

By Mr. Enright:

Q. You wouldn't know?

A. No.

Q. But in any event, a person doesn't have to come [Tr. 430] up there with a receipt, showing where they got the property?

A. No. Everbody trusts everybody there.

Q. Oh, everyone does up there?

A. Most of them that come in there are coin dealers. They have coin shops, or they have been collecting for a while.

Mr. Enright: Nothing further.

Mr. Monroe: One question, Mr. Diehl.

Redirect examination.

By Mr. Monroe:

Q. When you go to Coinarama to sell coins you also look at the coins that are offered for sale, do you not?

A. Yes.

Q. Even though your primary purpose is there only to sell?

A. Right.

Mr. Monroe: No further questions.

Recross-examination.

By Mr. Enright:

Q. Do you know of a person by the name of Hamburger?

Mr. Monroe: Beyond the scope of Direct, Your Honor.

Mr. Enright: I will withdraw it.

The Court: All right. You may step down. May this witness be excused?

Mr. Enright: Yes, Your Honor.

The Court: You may go, if you care to, Mr. Diehl.

[Tr. 431] Call your next witness.

I think before we call another witness you'd better get these tokens taken care of unless the next witness will be referring to them.

Mr. Monroe: Oh.

Mr. Enright: People call Melvin Shapiro, Your Honor, at this point. That was a witness we were going to take out of order.

Mr. Monroe: No objection.

The Court: All right. Mr. Shapiro, come forward, please.

MELVIN HENRY SHAPIRO, produced as a witness on behalf of the People, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Enright:

Q. Mr. Shapiro, what is your business?

A. Coin dealer.

Q. What is the name of the business?

A. Type Coinage Unlimited.

The Court: If you will get over a little closer to that thing.

The Witness: Okay.

The Court: Kind of talk into it like a telephone.

By Mr. Enright:

Q. How long have you been a coin dealer?

A. Approximately two years.

[Tr. 432] Q. How long have you been with Type Coinage Unlimited?

A. For that same length of time.

Q. Are you familiar with Mr. Ted Chimel, at the end of the table?

A. Yes, I am.

Q. Have you ever bought coins from Mr. Chimel?

A. Yes, I have.

Q. Directing your attention to October 14, 1965, at the PNG Show, are you familiar with those initials?

A. Yes, I am.

Q. What does it stand for?

A. Professional Numismatist's Guild.

The Court: What date was that?

Mr. Enright: On October 14, 1965.

The Court: Thank you.

By Mr. Enright:

Q. Did you have occasion to buy coins from Mr. Chimel on that date?

A. Yes, I did.

Q. Specifically, did you purchase an 1877-S Trade Dollar?

A. Yes, I did.

Q. Did you keep it in your business then after that?

A. Yes.

Q. Directing your attention to January 25, 1966, did Mr. Burton and Mr. Slocum come up to your place of business? [Tr. 433] A. Yes.

Q. Did you exhibit that particular trade dollar to Mr. Burton from our office and Mr. Slocum?

A. Yes.

Q. Did Mr. Slocum look at the trade dollar?

A. Yes, he did.

Q. Did they take the trade dollar with them?

A. Yes, they did.

Q. How many trade dollars did you have?

A. That's the only one.

Q. How many have you had in the two years that you were up there?

A. That's the only one.

Q. Did you have occasion to carefully examine this trade dollar for any unusual markings?

A. I only, when I buy something like that, I generally just look at the grade. I don't go to any length in examining it. I looked at it at the time, and it was fine to very fine, as I recall, and no chop marks.

Q. I show you People's Number Seven. Will you look at it? There's some typing there. I don't know if you recognize the typing, but look at the coin.

A. I recognize the typing on this. This is my envelope, my writing on the back of it, and I believe this is the same coin.

Mr. Enright: Nothing further.

[Tr. 434] The Witness: Pardon?

Mr. Enright: Nothing further.

The Court: Just a moment. Mr. Monroe may want to ask you some questions.

Cross-examination.

By Mr. Monroe:

Q. Mr. Shapiro, this coin to which you have referred in your testimony just given, this coin had no chop marks?

A. Correct.

Q. All right. Now, referring to—let me see that—referring to Exhibit Seven, the Trade Dollar, I ask you to examine the field of the coin above the head of the eagle, and tell me if you see a mark there, or marks?

A. Yes, there's a mark that—resulting from the rim of another coin hitting this coin in the field there.

Q. Is this what is known as a bag mark in the—

A. Could be called a bag mark.

Q. In the numismatic profession?

A. Could be.

Q. Do you have any doubt that that's a bag mark?

A. Well, in other words, a mark like that, it comes on the coin from another coin hitting it, another coin's edge hitting this coin. Whether it is in a bag or dropped, or another coin dropped on top of it, but it's generally referred to as a bag mark.

Q. In coins generally, Mr. Shapiro, with the exception [Tr. 435] of proof coins or mint coins, which are never bagged, this is a very common type of marking, is it not?

A. Bag marks on silver dollars in these size coins is very common.

Q. I see.

Mr. Shapiro, I show you another coin which is labeled Defendant's A For Identification, and ask you to examine that coin with care. Do you see any markings on that coin, sir?

A. There is a mark very similar to the same one that's on this trade dollar in a different spot. It's in front of the ear on the cheek of Liberty, bag mark. Other than that the coin is pretty clean.

Q. All right. Now, based on your experience and training as a coin dealer, do you have an opinion as to what caused the marking on Defendant's A For Identification, the silver dollar?

A. Bag mark.

Q. I see.

A. Another coin hitting it, the same way this one got its mark.

Mr. Monroe: I don't think this exhibit has come into evidence at this point. I would offer it in evidence at this point.

The Court: All right. Defendant's C?

Mr. Monoe: I think it's Defendant's A, Your Honor.

[Tr. 436] The Court: A, all right.

By Mr. Monroe:

Q. Turning now, Mr. Shapiro, to People's Exhibit Seven, in identifying that coin are you identifying the container in which the coin appears, or are you able to identify the coin itself?

A. It's been six months since I have seen this coin, and I know the container is mine, and I am fairly certain that the coin is the same one. In other words, this is what I would call a cheap item in numismatics. It was something that at the time that I got it wouldn't examine it thoroughly and recall it to memory, because there was nothing outstanding about it, but as I recall, this, I believe, is the same coin.

Q. When you say you are fairly certain that this is the same coin, do you mean that there is a reasonable possibility of error?

A. Well, there could be. In other words, I wouldn't swear that this is the same coin, because it was a cheap item when I got it, something that you don't keep in mind. It's been six months since I have seen it. It was nothing outstanding about it to remember, but as far a I can recall, this is—the other coin looked just like this one; put it that way. There was no chop marks on it, so on and so forth; clean, extremely very fine condition.

Q. I believe you testified that you purchased certain items from Mr. Chimel in October of 1965; is that correct?

[Tr. 437] A. Right.

Q. Do you remember what other items you purchased at that time?

A. Yes, I do.

Q. What were those items?

A. I am not positive about the number or the dates, but I recall purchasing five or six half cents, U.S. half cents, and this, and that's all that I purchased at that time.

Q. And this was at the——

A. PNG Show.

Q. Professional Numismatist's Guild Show?

A. Yes.

Q. Where was this show held?

A. This was held at the Statler Hotel downtown, Los Angeles.

Q. I see. Do you have any idea of how many coin dealers or coin enthusiasts were present at the show on October 14?

A. Well now, I don't recall whether this is a—this was a three-day show, so I don't remember whether it was the 14th, 15th or 16th that I purchased these, but at the show there must be a hundred dealers set up there, a hundred dealers with exhibits, and maybe another hundred that wandered around the floor, and so on and so forth.

Q. Would it be fair to assume that this show is [Tr. 438] similar to what Mr. Diehl has described as to Coinarama, various people with tables and various other people going to and from the people at the tables, buying and selling?

A. Well, it would be—there's all the difference in the world between Coinarama and the PNG Show, and I really couldn't compare the two; but you could compare Coinarama with these swap meets they have at the drive-in theaters on the week-ends, except, of course, it's on a much smaller basis; in that they are buying and selling, and they are dealer exhibits, I would say it is the same.

Q. I see. Now, during the—incidentially, did you attend all three days of the show?

A. I don't have a table there. I didn't have a table there, but I was there every day.

Q. Did you purchase any other coins at this show?

A. I'm certain I did. Yes, I did. I always purchase coins at a show. That's where I get most of my inventory.

Q. Do you remember anything else that you purchased there?

A. I remember one coin in particular that I am trying to recall to mind what I did purchase. I purchased a Barber quarter from Alvin Lesure. I think I purchased a Barber quarter from Joel O'Toole, various items of that nature.

Q. Now, you testified that Officer Burton and Mr. Slocum came to your place of business—I don't recall [Tr. 439] exactly when?

A. Some time late in January.

Q. And what was the occasion for their visit to your place of business, do you know?

A. Slocum came up with Mr. Burton in connection with —asked if I had done any business with Ted Chimel, or a fellow by the name of, I think it was Hamburg, or something of that nature.

I didn't recall Ted's name at that time. I don't think prior to that date I even knew his name, and I said, "Not to my knowledge." And he showed me a picture at that time of Ted, and I said, yes, I had bought coins from him. And they said, "What?" And, you know, if I'd mind, if I had anything left, or if I'd mind showing them what I bought, and I showed them what I had. And I think I showed them half cents, and I believe I had one or two half cents left. And Slocum seemed to identify this coin as being one of his, and asked if he could take it, and I said, "Yes; give me a receipt for it." And they did and left.

Q. This was in February of 1966; am I correct?

A. I think it was around January.

Q. January?

A. I believe so.

Q. But in October of 1965 you didn't know Mr. Chimel's name?

A. I don't believe I had known his name.

[Tr. 440] Q. How many times had you seen him before October of 1965?

A. Had seen him?

Q. Yes.

A. It's hard to say. Maybe three or four times, five times.

Q. Before that time had you ever had any dealings with him that you can recall, either buying or selling coins?

A. Yes, I think I had purchased a couple of coins, one or two or three coins, nothing major, from him, prior to that at Coinarama. (sic)

Q. Did Officer Del Coma visit your place at any time before—visit your place of business at any time before October 30, 1965?

A. Officer who?

Q. Del Coma.

A. The name doesn't ring a bell.

Q. Now, isn't it a fact, Mr. Shapiro, that you attended a

meeting at Mr. Slocum's home shortly before October 30, 1965, at which he discussed the fact that he had been burglarized?

A. No.

Q. No? Do you know Mr. Slocum?

A. Yes.

Q. Have you ever been in his home?

A. Yes, I have.

[Tr. 441] Q. When was the last time?

A. I don't recall the date, but it was some time before that. I was there on teletype business.

Q. It was some time before October 30th of 1965?

A. Yes, because I had the teletype removed around September, October, something around there. I had it removed, so the last time that I was at his house was maybe four or five months prior to that when I picked up a tape cutting machine that you use in connection with the teletype.

Q. I see. When did you have the teletype removed?

A. I believe it was September or October, somewhere in that—within those two months.

Q. Did you receive on your teletype on or about August 15 a listing of coins which Mr. Slocum claimed to have been taken from his place of business?

A. On which date?

Q. On or about August 15, 1965?

A. Not that I can recall. That's why I had the teletype taken out. I didn't read it much from that entire summer. As far as I could see, it wasn't a good item, so I didn't pay much attention to it, and finally had it removed, just shortly after that date.

Q. Mr. Shapiro, isn't it a fact that shortly before October 30, 1965 you pointed out Mr. Chimel to Mr. Slocum at the Coinarama?

[Tr. 442] A. No, that's not a fact.

Mr. Enright: Your Honor, it is immaterial. The evidence before the Court is that the burglary of the Slocums was in August of '65, the burglary of the Pulatis is in February.

Mr. Monroe: Did I get the wrong date? I meant to say——

The Court: Well, let's get along, gentlemen.

Mr. Enright: I am going back to your meeting at the house back in February.

Mr. Monroe: That was February of '66.

Mr. Enright: All right.

Mr. Monroe: No further questions of this witness.

Redirect examination.

By Mr. Enright:

Q. Now, Mr. Shapiro, you have only had one trade dollar; is that right?

A. Yes.

Q. And this was the trade dollar that you bought from Mr. Ted Chimel?

A. To the best of my knowledge, yes.

Q. You bought a trade dollar from Mr. Chimel; is that correct?

A. Yes.

Q. Is there any doubt about that?

A. No doubt about that.

Q. Did you have occasion to see Mr. Chimel after buying the trade dollar?

[Tr. 443] A. I think I had seen him a couple times since then, Coinarama, and so forth.

Q. Did you have occasion to see him while this case was —in the last couple months, pending this trial?

A. Yes, I saw him in Coinarama maybe a month and a half, two months ago, something like that.

Q. And did you talk about this particular case?

A. I just mentioned it briefly. I just asked him what was going on.

Q. And he told you he was going to trial; is that correct?

A. Right; that was about the extent of the conversation in regards to it.

Q. Did you ask him about—did you ask him about the fact that he sold the trade dollar to you? Was the conversation along those lines?

A. Yes, something of that nature. I told him that Slocum and Mr. Burton had taken the trade dollar.

Q. And did he deny selling you the trade dollar to you?

A. As I recall, he said something to the extent that "I don't recall selling you a trade dollar," or something like that, and I said, "Remember the trade dollar and the half cents?" He said, "I remember the half cents; I don't recall the trade dollar."

Q. Did he say something about it being his word [Tr. 444] against your word?

A. I said, "Well, they took it, and I remember getting it from you, and I am going to have to testify that I got it from you." He said, "Well,"——

Q. He said, "Well," what?

A. Well, you know, in other words, if he denies it, it would be my word against yours.

Mr. Enright: May I approach the witness, Your Honor?

The Court: Yes.

By Mr. Enright:

Q. You can't tell sitting there how these marks got on the trade dollar?

A. What do you mean?

Q. Well, can you, sitting here, in 1966, tell us how the marks got on the trade dollar?

A. I can't, sitting here, tell you how those marks got on that dollar, but I can——

Q. Other than it would appear to be metal marks on the dollar?

A. But I can tell you generally how marks of that shape get on to silver-dollar-sized coins.

Q. You said before it was a mark. Is it one mark or——

A. Well, it's one mark caused by the rim of another coin, so it could be, depending on how deep the gash went into the other coin, it could be three or four or five marks, and they are generally connecting as a result of the rim of [Tr. 445] another coin of the same size to match those marks hitting the coin in its field.

Q. Now, this is a pretty well-circulated coin, is it not?

A. Actually it's—it probably is well circulated, but it's still in very, very fine condition.

Q. Now, will you look through this glass here at the marks and also then look at the marks on this other coin here? Now, they are not identical, are they?

A. They are very similar, but they are not identical.

Q. And they are also in a different part of the coin, are they not?

A. Correct. Well, they are different coins.

Q. In a different area of——

A. Right: one is in the center of the coin, and the other is more toward the edge.

Q. Now, in looking at this coin can you tell when the mark was placed on this 1877 coin?

A. No.

Q. Can you tell by its condition that the mark might have been placed on it after it was in circulation?

A. Well, you can't tell. In other words, these things also circulated in bags, in circulating condition. In other words, they were put into bags, and not only in BU condition, but also in circulated condition, so at any time another coin of this size with a serrated edge like [Tr. 446] this hits that coin in the field, it could happen anywhere between 1877 and up until some recent period.

Q. Would you expect that coin there that has the marks, obviously the mark was put on it while the coin was still in very good condition?

A. This coin is still in uncirculated condition.

Mr. Monroe: I will object to the question as stating an opinion of the District Attorney.

By Mr. Enright:

Q. Is the coin in good condition now?

A. This coin is still in uncirculated condition.

Q. And obviously the mark was put on in an uncirculated condition?

A. Right, and another coin in a bag hit this, apparently.

Q. The coin wouldn't have to be in a bag?

A. No.

Q. Could an instrument make a mark on a coin like that?

A. I am certain that if someone went out of their way to put a mark on a coin, they could do it, but I believe that this happened as a result of a bag mark or another coin hitting it.

Q. Now, this coin you cannot tell whether it was marked while it was in an uncirculated condition or after it was out in circulation, can you?

A. No.

[Tr. 447] Q. If you will just pardon my lack of artistry, would you come to the blackboard and using the glass, if you would—I know we aren't to scale, will you try to show

as many marks as you see and where they are in relation to the eagle's head?

The Court: I am glad you told us what that is, Mr. Enright.

Mr. Enright: One of my better drawings.

The Witness: That's the rim mark you are referring to? (Indicating.)

By Mr. Enright:

Q. Right.

A. Another smaller one down here. (Indicating.)

Q. Just on this one here. Now, this part of the surface is raised above this part, is it not?

A. The eagle, yes; the eagle is raised above the field.

Q. So it's raised.

A. There are some nicks and things around here, just small. (Indicating.)

Q. But you definitely can make this out, even with the naked eye, and certainly with the glass, it's very obvious?

A. Right.

Q. Now, when you bought that coin you did not examine it that carefully to note this mark; is that correct?

A. If it had been an uncirculated coin and had that [Tr. 448] mark on it, I definitely would have noted it, because you are talking about a far more expensive item, and you are also talking about a mark that may hamper the reselling of the item; but once the dollar is circulated——

Q. You expect to see marks of that nature?

A. Right.

Q. But in any event, when you bought the coin from Mr. Chimel, you did not take particular note of those markings; is that correct?

A. I imagine that at the time I bought the coin—I look at every coin I buy, and I probably did look at the—at that mark. I mean it is—it's there, and I probably saw it. I am sure I saw the mark, but I didn't say anything about it; because the coin isn't a big enough item for it to make a difference, the mark, to change the value of the coin that much.

Q. Now, in circulation would you expect a mark like that over, say, 60, 70 years of circulation, or perhaps 90, to be

less—to be worn down, with just the wearing of the pants and the papers?

A. No, not in this particular item, because on either side of that mark there is a raised area, and before that mark's going to get worn down the raised area is.

Q. This would be for all intents and purposes a permanent mark on that coin; is that correct?

A. Yes, for all intents and purposes.

[Tr. 449] Q. Unless someone went out of their way to remove it?

A. Remove it.

Q. And then they would still do more damage to the coin; is that correct?

A. Right.

Q. And you say that one thing you recall, while you didn't recall these specific marks as such, you recall that it was a trade dollar that did not have a chop mark?

A. Right; it was clean. I believe this is the coin. It's—it was clean and very, very fine condition, no chop marks.

Q. Now, the chop marks, are the marks that the Chinese head of the town or the——

A. Store owner or whatever.

Q. —head man, would put on usually in Chinese symbols; it might be his initial or something, on the coin; is that correct?

A. Correct.

Q. To test to see if it was really silver underneath the coin?

A. And the weight.

Q. And the weight. And I assume that you have never seen an 1877 Trade Dollar with those four marks in that position to the head? (indicating) before?

A. Oh, I can't say that. I mean I have seen a lot of trade dollars in two years. I haven't handled any, but I [Tr. 450] have seen a lot of them, you know, and nearly every dollar that's not proof has got bag marks on it.

Q. Do you have a recollection of seeing a mark in that position to the head, the three ridge marks, as are on that coin there?

A. I have never studied any other coin before. In other words, a coin of this condition or whatever.

Q. You have never studied them for that purpose?

A. No. In other words, I have looked at many trade dollars in two years, but there was never anything important enough to make me remember anything of that nature.

Q. Have you seen many people in your time that had tattoos on their arm?

A. Yes.

Q. But unless it was of significance you didn't study where the tattoo was?

A. Well, on the arm, you know. I didn't pay much attention.

The Court: Let's stick to coins. Let's don't get into the subject to tattoos. It's complicated enough, coins.

Mr. Enright: Matter of identification; I'm sorry, Your Honor. Nothing further.

Recross-examination.

By Mr. Monroe:

Q. Mr. Shapiro, with reference to the conversation which you had with Mr. Chimel, to which you have just testified, approximately when did that conversation take [Tr. 451] place?

A. I really don't know. It was some time between a month and two months ago, maybe two and a half. I haven't been to Coinarama for four or five weeks, I know that, but it was some time prior to that.

Q. In the two years that you have been in the coin business, can you estimate for the Jury how many silver dollars and trade dollars you have seen bearing similar marks to the two coins which are before you?

A. It would be hard to guess a number, because, as I said, almost every silver dollar that I have seen that isn't proof, that isn't a real choice piece of merchandise, has bag marks, and——

Q. Well, can you make a reasonable approximation of the number of——

A. I have seen thousands of silver dollars. I have sold thousands of silver dollars.

Q. Now, isn't it a fact, Mr. Shapiro, that in your conversation with Mr. Chimel of a month or two ago that you stated to him that you didn't really remember whether he sold you a trade dollar or a Liberty-seated dollar?

A. No, I didn't.
Q. You did not make that statement?
A. No, I didn't.

Mr. Monroe: No further questions.
Mr. Enright: Nothing further.
[Tr. 452] The Court: All right. You may step down.
Mr. Enright: May the witness be excused, Your Honor?
The Court: Mr. Monroe? May the witness be excused?
Mr. Monroe: Certainly, Your Honor.
The Court: You may go, Mr. Shapiro, if you care to.
Mr. Monroe: Call Mr. Russell May.

RUSSELL ALBERT MAY, produced as a witness on behalf of the Defendant, and being first duly sworn, was examined and testified as follows:

Direct-examination.

By Mr. Monroe:

Q. What is your address, Mr. May?
A. 13061—getting a feedback on that—13061 Fairview, Garden Grove.
Q. And how long have you lived at this address?
A. Five years.
Q. And what is your occupation, sir?
A. Carpenter.
Q. Now, with reference to the early months, January and February and March of 1965, were you associated in any way with Mr. B. R. Slocum as an employee or partner or an investor in any business?
A. Partner in teletype circuit.
Q. I see. During what period of time were you such a partner?
A. Approximately middle of January to March, first part of March.
[Tr. 453] Q. And where was this business located, Mr. May?
A. In Fullerton.
Q. Do you know the address in Fullerton?
A. No. Raymond Street.

Q. Would it be 151 North Raymond?

A. Yes, yes, I think that is it.

Q. And this was the same location, was it not, at which Mr. Slocum had his retail coin shop?

A. Yes.

Q. It was all in the same building, both the teletype business and the coin shop?

A. Yes, sir.

Q. Now, did Mr. Slocum at any time mention to you a loss by theft or disappearance or any other loss of any coins from that shop?

A. No.

Mr. Monroe: I have no further questions.

Mr. Enright: No questions of this witness, Your Honor.

The Court: All right. You may step down. May the witness be excused?

Mr. Monroe: Certainly.

Mr. Claude Thomas, please.

[Tr. 454] CLAUDE LEE THOMAS, JR., produced as a witness on behalf of the Defendant, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Monroe:

Q. Mr. Thomas, what is your address, sir?

A. 919 West Pomona in Santa Ana.

Q. And inviting your attention to the last months of 1964 and the early months of 1965, specifically January and February, were you associated in any way with Mr. B. R. Slocum?

A. Yes, I was.

Q. And how were you associated, sir?

A. Well, he wanted me to move some coins into his business, and the two of us try to establish a better business.

Q. And did you do so?

A. I did so, yes.

Q. Let me back up just a little bit. What was your business prior to this time?

A. I owned a coin shop on South Main Street, Claude's Coin Exchange, 1026 South Main, Santa Ana.

Q. And then you did about this time move your—some of your coins into Mr. Slocum's place of business in Fullerton?

A. I did.

[Tr. 455] Q. What was your relationship then? Were you employed by Mr. Slocum?

A. Not at that time, no.

Q. I see. Did you have access to his shop?

A. Certainly did.

Q. And this was during all of January and February?

A. Yes, sir.

Q. Now, did Mr. Slocum at any time mention anything to you about the loss by theft of by burglary or otherwise of coins from that shop?

A. He may have, but I don't remember such incident.

Q. Did he make any inquiry of you as to where certain coins were?

A. No, I'm quite sure. A dealer is always misplacing coins. I do it myself, but he never accused me, or anything like that.

Q. I see. Did he mention anything to you about someone removing roof panels or ceiling panels?

A. Not to my knowledge, no.

Mr. Monroe: I have no further questions.

Cross-examination.

By Mr. Enright:

Q. Then I assume, Mr. Thomas, you are not aware of the incident that there was some coins misplaced in the shop temporarily, and the police came out, and those coins were found. You have no recollection of that?

[Tr. 456] A. No, I don't have any recollection of that.

Q. It is not uncommon to misplace coins?

A. It isn't, no. You have thousands of coins in your possession, a dealer, and they range from pennies to dollars, and you have various places to put them, and sometimes you put them in a drawer, or something, and you just can't find them.

Q. Was Miss Lane working out there at the time you were?

A. Miss whom?
Q. Miss Lane, the sister-in-law of Mr. Slocum?
A. No, she was not.
Q. You were at a different period of time?
A. Yes, sir.

Mr. Enright: Nothing further.
Mr. Monroe: Nothing further.
The Court: You may step down. May the witness be excused?
Mr. Monroe: Certainly.
Call Lieutenant Kenney of the Fullerton Police Department.

JERRY G. KENNEY, produced as a witness on behalf of the Defendant, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Monroe:

Q. Mr. Kenney, what is your occupation, [Tr. 457] sir?
A. I am a Police Lieutenant employed by the City of Fullerton.
Q. And how long have you been so employed?
A. Twelve years.
Q. And what is your present duty assignment with that department, sir?
A. I am in charge of the Records Bureau.
Q. All right. When a report is received by your department in the normal course of business, is a particular type of record of any sort prepared of any reports received by the department?
A. Yes. Any time one of our officers is dispatched to any type of an incident they are required to prepare a report.
Q. And these reports are prepared in the normal course of business; is that correct?
A. Yes.
Q. All right. Have you reviewed those records, the records of the Fullerton Police Department, with reference to the business known as the Money Vault in Fullerton, for the months of January and February, 1965?

A. Yes.

Q. Do you have those records? Do you have those records or copies thereof with you?

A. Yes, I have certified copies of the police records.

[Tr. 458] Q. May I examine them?

The Court: Let's take a recess, and maybe you can figure out what you want to ask this witness during the recess.

Mr. Monroe: All right, sir.

The Court: Ten minutes after 11, Members of the Jury.

(Recess taken.)

The Court: Stipulate the Members of the Jury are all present and in the box?

Mr. Monroe: So stipulated, Your Honor.

The Court: All right. Proceed.

By Mr. Monroe:

Q. Mr. Kenney, I return to you the records which you have supplied, and referring to February 19, 1965, do your records indicate any sort of alarm received from the Money Vault in Fullerton?

A. Yes, there is an indication that there was an alarm furnished by Orco, O-r-c-o, Burglar Alarm Company sounded at that location.

Q. What was done in response to that alarm?

A. We had two officers respond to 151 North Raymond, the Money Vault; the officers arrived at the building, they checked the building and found it secured; they found no sign of anyone making entry into the building.

Q. Was any further action taken?

A. The Orco Alarm Company was contacted, and they advised that they would reset the alarm.

[Tr. 459] Q. I see. Now, with reference to February 20, 1965, was a report received by your department?

A. This is correct.

Q. And what sort of a report was this?

A. This is, again, a silent burglar alarm ringing in the establishment at 151 North Raymond.

Q. And what was done, if anything, by your department?

A. We dispatched two officers again to the scene. One officer checked the front and rear of the building, the other

one checked the roof of the building, found no indication of —found no indication of entry being made into the premises.

Q. Now, shortly thereafter did your department receive a theft report with reference to the Money Vault?

A. On 3-11-65 we took a petty theft report from the Money Vault.

Q. And what was indicated in that report? Strike that. Who made this report?

A. The reporting party or the officer?

Q. The reporting party?

A. Mr. Slocum.

Q. I see. And what did he report?

A. He reported that various coins had been missing from the shop; that these included a 1907 proof quarter with a value of a hundred seven dollars; three 1938-D half dollars with a value—which were valued at $450; three [Tr. 460] Indian-head cents, valued at $600, as well as other valuable coins in a cardboard box: the measurements, two inches by two inches by 12 inches. These coins had apparantly been returned from an exhibit, and a value was placed on these at $4,000.

Q. I see. What action, if any, was taken by your department?

A. An investigation was initiated into this. Later with a follow-up investigation by one of our investigators it was determined that the coins had been misplaced in the building by someone connected with the firm.

Q. When was this determined, Officer?

A. 4-29-65.

Q. And what was the date of the initial report of this loss?

A. 3-11-65.

Q. And how did your department determine that the coins had been located?

A. They contacted—let me refresh here, and see what this states—our investigator, Detective Hitzeman, contacted the wife of Mr. Slocum by telephone, and she advised that the coins had been located in a cloth under the counter the next day, but they failed to notify the department that their property had been recovered.

Q. In making the original report did Mr. Slocum mention

any person who might have had access to these coins?

[Tr. 461] A. Yes. There are two subjects here that were associated with Mr. Slocum: one being a Mr. DeWolf, the other Mr. May.

Q. And did Mr. Slocum indicate to your department how to contact Mr. May?

A. No, there is no information in regards to Mr. May. Says that the only thing it gives is "Russ May, address unknown."

Mr. Monroe: I have no further questions.

Cross-examination.

By Mr. Enright:

Q. Now, Lieutenant, in that report, and, of course, this is a police officer's report of what Mr. Slocum indicates—does it indicate that the police officer is asking who might have had access to the building and when it gets down to Russ May, doesn't Mr. Slocum indicate that Mr. May had some relationship at one time, may have had a key?

Read what it says about Mr. May. I don't want to guess what it is.

A. It says Mr. May had expressed a desire for a key. However, Mr. and Mrs. Slocum apparently did not give a key to the subject, because there is no indication here. Says only a desire, but it doesn't say that he had a key.

It does indicate that he did have the code for the alarm company to advise them that the alarm was going to be set off. There is a program set up with the alarm companies [Tr. 462] through the owners and the owners, that notifies the alarm company that someone on the premises, who is authorized to be there, will set off the alarm. Apparently Mr. May had this information.

Q. And does it go on to indicate whether or not Mr. Slocum suspected Mr. May?

A. No. It states that they did not suspect him of the thefts. This is in the initial report.

Q. When the officer reeontacts the business they are told that the coins were found the very next day after giving the initial report, and by inadvertence they didn't notify the police department; is that correct?

A. This is correct.

Mr. Enright: Nothing further.

Mr. Monroe: Nothing further.

The Court: All right. May the officer be excused?

Mr. Monroe: Certainly.

Mr. Enright: Yes, your Honor.

Mr. Monroe: Your Honor, I think the three reports from which the officer testified, I believe he has certified copies, if it is not objectionable to the officer, I would like to offer them in evidence at this time.

Mr. Enright: Your Honor, I have an objection to the whole testimony and the reports as being immaterial, absolutely no value to this case at all.

Mr. Slocum testified about the burglar alarm going off, [Tr. 463] and we have three reports produced here as if he was Roger Touhey, or something. We find out they are burglar alarm reports, and he testified about the reports, and they found the coins the next day.

Mr. Monroe: Mr. Slocum testified he made no police report.

Mr. Enright: That is the most collateral type of impeachment. He said there was no police report.

The Court: Motion to strike the officer's testimony will be denied. I don't see where the—you object to them on what ground?

Mr. Enright: It's immaterial to this lawsuit.

Mr. Monroe: Your Honor, it's all come in. Counsel has had ample opportunity to object.

Mr. Enright: I object to the reports going in. I don't mind you wasting some time. You brought reports up here. I wanted to let the Jury know what they are. You mentioned the man's name. It could have been anything.

Now when you want to put the reports in I object that it is absolutely immaterial.

The Court: I really don't see any materiality to them after the officer's testified.

Mr. Monroe: Well, as Your Honor sees fit. The evidence is in and he's testified from the report. I think it's a valid exhibit in the case as long as the evidence has come in.

[Tr. 464] The Court: It will not be received as exhibits.

Mr. Monroe: Custodian of Records of Orco Alarm, please.

MARTHA HELEN CASTLE, produced as a witness on behalf of the Defendant, and being first duly sworn, was examined and testified as follows:

Mr. Enright: Your Honor, in view of the last witness, before we get into this witness' testimony, may we approach the Bench and have an Offer of Proof? I have a feeling what the testimony is going to be. I don't know. I haven't seen the reports, but before we waste 15, 20 minutes going into it——

Mr. Monroe: Your Honor, I don't think any counsel is obligated to make an Offer of Proof until there is an objection to the evidence before the Court.

The Court: All right. Offer of Proof will be denied at this time.

Proceed.

Direct examination.

By Mr. Monroe:

Q. Miss Castle, it's Miss Castle, isn't it?

A. Yes, sir.

Q. Where are you employed, Miss Castle?

A. At Orco Burglar Alarm Company, 1031 West Fourth in Santa Ana.

Q. Would you get a little bit closer to the microphone? It's a little hard to hear.

[Tr. 465] A. Okay.

Q. And how long have you been employed there?

A. I have been there now for four years.

Q. And specifically, what are your duties with Orco?

A. Well, I am keeper of the records and also a secretary.

Q. Now, in order that we may better understand your testimony, can you tell the Jury generally—first of all, what the business of Orco Alarm is?

A. Well, Orco Alarm installs burglar alarms, silent and audible and silent, into businesses throughout Orange County. They come into our central station or go to the police department, and we do not manufacture them, we just install the alarms.

Q. Now, Miss Castle, these alarm systems are installed in various private businesses; is that correct?

A. Yes, sir.

Q. And then they are connected electrically either with your office or with the police department?

A. These are not connected electrically. They are through the telephone lines. They are leased telephone lines.

Q. I see. And simply by way of example, can you describe for the Jury as far as the operations in your office, what happens when one of these alarms is tripped or otherwise set off?

A. Well, if the alarm is turned on at night this— [Tr. 466] and say someone opens a door, we get a signal through the telephone line, and this will be in a way of rounds. First we have a code, like it will be set up one and two, or one and four. This comes over a panel and it's more or less like Wall Street where it ticks.

It either makes dashes in the tape or with a pen, and so this code comes in; it comes in in a series of rounds, and when we get three rounds this is an attack as far as we are concerned, unless we get a call prior to someone going in. Then we, of course, dispatch the police department.

Q. Now, do you have means through your office of checking to see whether a given alarm system is in working order?

A. Yes, sir.

Q. Now, what records, if any, are kept with respect to the alarm systems which you have in operation?

A. All of our records are kept for a year, and then they are disposed of. We keep all the time stamp records; that's their openings and closings; we keep all attack reports and all code card records.

Q. Now, do I understand correctly that from these records you are able to determine when a particular alarm system is turned on, for example, at night, and when it is then turned off again in the morning; is that correct?

A. Yes, sir.

Q. Now, I believe that you have with you certain [Tr. 467] records with reference to the Money Vault owned by Mr. B. R. Slocum?

A. Yes, sir.

Q. And is it possible for you to determine from those rec-

ords, first of all, at what times and whether the alarm system at 153 North Glassell was in operation?

A. Yes, sir.

Q. Will you refer to those records and——

A. I have them.

Q. Thank you. Would you—. May I have the records for a moment? I am slighting Mr. Enright.

A. Just the Orange or all of them?

Q. Well, let me have them all, if I may. I am slighting Mr. Enright quite unintentionally.

Mr. Enright: May I take this witness on Voir Dire, Your Honor?

The Court: You may.

Voir Dire Examination.

By Mr. Enright:

Q. Did you fill out the information that is on these attack alarm records here?

A. No, sir. These were filled out at the time of the alarm. The specific operator on that time filled them out.

Q. And there is a stamp up here. That is stamped on the card when the alarm is received and such?

A. Yes, sir.

Q. But this information that's written in here— [Tr. 468] let me show you this one card, Number 2355. Up at the top it says, "Alarm Received," and it has the "7:42" on it. Do you know how that 7:45 got there?

A. Yes, sir. At all times when we receive an alarm we have to time stamp these cards. These are attack alarm records, and it was stamped at 7:42.

Q. And what type of alarm was it? Can you tell from that record?

A. Yes, sir. This was the burglar alarm itself, and it did go three rounds, which would indicate an attack at this time.

Q. Then that's for the morning of August 15; is that correct?

A. Yes, sir.

Q. Can you tell from that card or from your knowledge —well, strike that.

You didn't put the writing down on the card below that?

A. No, sir. This is the operator's writing that was on at that time.

Q. So the information that's on this card, you wouldn't know how they gather the information?

A. No, sir.

Q. And particularly on that particular card you wouldn't know who tripped that alarm?

A. I wasn't on at that time so I couldn't say.

Q. The card I am referring to, Your Honor, deals with [Tr. 469] 7:42 in the morning of August 15, at 7:42.

So, you wouldn't know whether the police officer happened to trip this alarm?

A. No, sir. The police department when we call them and give them an alarm, if they trip it, they tell us, and this would be written on the card, if they tripped it. They state whether they have opened or closed a door, or whatever.

Q. Well, on that particular card, does it state who tripped the alarm? That's the card dealing with August 15, 1965.

Mr. Monroe: I am wondering, Your Honor, if this is Cross Examination or Voir Dire?

The Court: Well——

Mr. Enright: Maybe we can——

The Court: It's proper, I think. Go ahead.

The Witness: It does not give a certain name, no, sir. It just—should I say what it says?

By Mr. Enright:

Q. Yes, what does it say?

A. It says that someone went from the shoe store next door to the Money Vault. It doesn't state a certain name.

Q. Does it say anything about the police there?

A. Well, it just says, "Orange Police Department said someone went from the shoe store."

Q. So, when the alarm went off at 7:42, it doesn't say on that card how it went off?

[Tr. 470] A. No, sir.

Mr. Enright: There is a lack of foundation, but I am not going to object to that. I am assuming these cards are kept in the regular course of business by the company?

The Witness: Yes, they are.

Mr. Enright: I don't object to the fact it is an exception to the Hearsay Rule, cards kept in the regular course of business, but I do object just on the basis of the Voir Dire Examination, that it is immaterial, since I did pick the one date that dealt with the burglary, and we saw what was on the card.

The Court: Overruled.

Direct Examination Continued.

By Mr. Monroe:

Q. Referring to the Orco Alarm records, Miss Castle, can you determine whether or not the alarm system in the Money Vault at 153 North Glassell in Orange, was operative on August 14, 1965?

A. Yes, sir.

Q. And what do your records show for that date?

A. On August the 14th the Money Vault was opened at 10:08 a.m. The alarm was turned off at that time. The alarm was turned back on at 5:29 p.m. on the 14th.

Q. I see. Now, what is the next entry shown after the 5:29, August 14 entry?

A. The next entry would be at 7:42 a.m. on August 15, and this is our attack report card, 2355.

[Tr. 471] Q. Do I understand correctly that there is no record in connection with the alarm system between those times?

A. Yes, sir, that's right.

Q. Any alarm which had been received during those times would appear in your records; is that correct?

A. Yes, sir, there would have been another attack record report.

Q. I see.

Mr. Monroe: I have no further questions.

Cross-examination.

By Mr. Enright:

Q. I didn't get your last name, excuse me.

A. Castle.

Q. Is it Miss?

A. Yes, sir.

Q. Miss Castle, you mention this three rounds?

A. Uh huh.

Q. Will you tell us what that is? What do you mean by "three rounds"?

A. Well, I will have to start from the beginning, on a regular closing. When they turn their alarm on, they will turn it to "test" first. Most of the instruments do have a buzz to let them know that everything is shut, their doors, their traps, whatever, if they have the photoelectric cell.

All right. They turn this on. We receive one round. I stated before the code one and two. It's a dash one and [Tr. 472] then two dashes. This makes a round. All right. One round will come on when they turn it on. When they open and close a door, we receive four rounds. We receive three rounds when they open a door; one round when they close it. In other words, that was resetting it. So we receive five rounds.

A three round would indicate opening a door and leaving it open, not closing it. If they did close it, we would receive one more round, would make four rounds. That is a normal opening and closing.

Q. Suppose a wire is struck or touched, but the—well, let's take the obvious one. Suppose a trip wire is touched and it breaks contact. How many rounds would you receive?

A. We would receive three rounds.

Q. Is there any way of receiving less than three on a contact with the wire?

A. No, sir. It automatically sends in three rounds. There's no other number.

Q. If the wire isn't struck, and it doesn't break contact, I assume you don't receive anything?

A. That's right.

Q. Can you tell from your records when the Orco people went back in after August 15 to do some rewiring? Do you have those records?

A. Yes, sir. They—Mr. Slocum opened up on the [Tr. 473] 15th at 9:06 p.m. Our man was out there, and we met him there. We were out there until 9:14 p.m.

Q. And do your records indicate that some additional alarm system was put on the back wall, or can you tell from that?

A. I can't tell from this, no, sir.

Q. You just deal with the—. And I assume from the record you can't tell what type of alarm system—I am specifically talking about now trip wires and such—that Mr. Slocum had?

A. Yes. We have on the top of our cards what is protected in that area. Every business—I should state not every business, but every coin business will have a string trap, but it does say what is protected.

Q. Could you tell just looking at the card of August 15, or using that card, can you tell us what was protected in Mr. Slocum's store on August 14?

A. Yes, sir. All doors, all glass, and they had hold-up buttons.

Q. They had hold-up buttons, all doors and all glass. After the 15th is there a change in the protection? Can you tell from the card?

A. No, sir.

Q. You can't see any? doesn't indicate?

A. No.

Q. Is there any indication about a trip wire from [Tr. 474] that, all doors, all glass?

A. It's not stated on the card, no, sir.

Mr. Enright: Fine. Nothing further.

Redirect examination.

By Mr. Monroe:

Q. How often, Miss Castle, is an alarm system normally checked?

A. They are normally checked every six months.

Q. Do your records show when the last check of this particular system was made?

A. No, not of this one. May I——

Q. Certainly.

A. This alarm was installed in the Orange store at 153 North Glassell July 15.

Q. I see. Do your records show you whether the system was checked at that time?

A. Well, it was installed, and so it has to be checked out before our installation crew leaves.

Q. I see.

Mr. Monroe: No further questions.

Mr. Enright: Nothing further.

The Court: All right. You may go.

Mr. Monroe: Your Honor, next witness will be the Defendant. I suppose we'd better start.

The Court: All right.

Mr. Monroe: Mr. Chimel.

[Tr. 475] Ted Steven Chimel, produced as a witness on his own behalf, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Monroe:

Q. What is your occupation, Mr. Chimel?

A. Dental Technician.

Q. Do you have any other occupation?

A. Coin dealer.

Q. Inviting your attention to the—Strike that. How long have you been collecting coins or dealing in coins, Mr. Chimel?

A. On and off since 1947.

Q. And inviting your attention to the month of August, 1965, were you dealing in coins at that time? Well, you describe your activities in connection with coins during that month.

A. During that month I had been active in coins, and around that time I always placed an ad in what we call The Penny Saver. It is a local paper that comes out. Then I——

The Court: Now, pull that over to you just a little more, Mr. Chimel. It isn't coming through too well.

The Witness: Then I also put ads in the Coin World, which is a numismatic paper.

By Mr. Monroe:

Q. What were these ads for, Mr. Chimel?

A. Well, there were ads I put in to buy coins, and [Tr. 476] there's also ads I put in to sell coins.

Q. And did you include in the ads an address or a phone number?

A. I always put a telephone number. I don't believe I ever recall putting an address, because I didn't like people knowing where I lived. If they had something they wanted to sell me, they would ask me for my address then.

Q. Now, inviting your attention to August 14, 1965, will you tell the Jury what happened? First of all, where you were and what happened on the afternoon of that day?

A. Well, on that particular day I was at home, and I had various phone calls through my ad, and this one particular gentleman called me—he called me a few times in the past to ask me about various coins, and what was a good price on them, and I talked to him, and he was a very good conversationalist; I enjoyed talking to him.

So, on this particular day he calls me up, and he asked me about Mr. Slocum's shop, the Money Vault. I says, "Oh, why, I know it. He hasn't been there too long." And he asked me about the prices on his coins. I says, "Well, actually his prices on his coins are very reasonable, but they are sort of over-graded, so to correspond with the price and the over-grade you are not getting such a good deal."

I says "Well, some are undoubtedly are, and some aren't, but most of them, watch them close." So he says to [Tr. 477] me, "He has quite a few coins, doesn't he?" And I says, "Yeah, he has quite a bit all right. I think the most in Orange County that I know of." And he says, "Man, I'd like to have those coins."

And I said, "There are a lot of collectors that would like to have a collection like what he has." He says, "Oh, I'd like to have those coins." So, you know, when he repeated it twice it sort of hit me funny. So then he says to me, "You know, I think I am going to knock that place off."

So I says, "Yeah, yeah, you are." I—sort of kidding around with him, you know, the way he said it. I thought, "Well, he'd really like to have those coins; he'd like to knock the place off to have those coins," but I never gave it much thought, see.

So we talk a little bit, and he says, "Well, I will let you know," or something of this nature. I can't exactly tell you what words. So he hung up, and at that particular time I started coming out of the house and Mr.——

Q. This conversation was on the telephone at your home; is that correct?

A. Yes, it was.

Q. Okay. What happened then?

A. Then I was coming out of my home, and I don't think I—I couldn't even have been out not even a minute, I just got out when Mr. Ambrose rode up on his bicycle, and he [Tr. 478] asked me if I wanted to go bicycle riding, and I said to him, Hey, Buddy, I got a big deal tonight. I can't be held off. I am going to knock off a coin shop."

Then at that particular time I have a friend named Chuck Hamburger. He had some Walkie-Talkies, we just purchased Walkie-Takies, and wanted to go out to the desert that day. So I had one in my car and he had one in his house, and we tried to see if we could pick each other up. So I says, "Look, I even got a Walkie-Talkie." So it was all a joke, really.

Q. Incidentally, where were these Walkie-Talkies purchased?

A. These Walkie-Talkies were purchased at ABC.

Q. Who purchased them?

A. I purchased them myself with Chuck Hamburger.

Q. I see. Now, the Chuck Hamburger to whom you refer, that's the same person as Charles Robert Hamburger about whom we have heard earlier testimony?

A. I believe it's Charles Thomas Hamburger.

Q. Charles Thomas?

A. I believe.

Q. And where did he live, Mr. Chimel?

A. Now, to give you the exact address, I couldn't tell you; but he lives in Garden Grove. I believe it's on Donegal Drive.

Q. Does Mr. Hamburger still live there?

[Tr. 479] A. Well, it's—let's say he has his house up for sale with his furniture in it, but nobody can contact him. He skipped town.

Q. All right. You talked to Mr. Ambrose. What did you do then on this day, August 14?

A. What did I do? You mean afterwards?

Q. Yes, after you talked to him, what did you do?

A. Well, I was waiting around prior to this, I was waiting around for Chuck to come over to my house. He was sup-

posed to have come over to my house around 2:30, somewhere in the early afternoon, but he never gotten there.

In the meantime I had been trying to pick him up on this Walkie-Talkie at his home, because he wanted to see how long the range would be. So I called him on the telephone. I got no answer. So I waited. He didn't show up to my house until about 7:30, and when he did show up he had the Walkie-Talkie, but the antenna was bent, and he told me he got it caught in the door.

Q. This is Mr. Hamburger now?

A. Yes, yes. Anyway, well, naturally when I seen my antenna bent I am sort of sore, but, and yet again I don't want to say nothing, and he is late on top of it, so I said, "Well, what happened?" He said, "Well, I broke the antenna, and I hated to come over and tell you about it."

So, anyway, well, at that time I figured why bother about it? I mean, you know, why go on? It happens. It's [Tr. 480] done; it's done. I said to him, "What are you doing the rest of the night" And he says to me, "Nothing particularly."

So, anyhow, while we are talking about this I don't want him to feel bad about it. I said, "Hey, how would you like to take a ride down to the Watts' riots?" at that time. He said, "That ain't a bad idea." So, anyway, we left, and he left his car at my home. We took my car and we went——

Q. What kind of a car is this?

A. Oh, I have a '64 station wagon, Ford.

Q. And there were only the two of you that left then in the '64 Ford; is that right?

A. Yeah, that's right.

Q. All right.

A. So then we went downtown, and when we got downtown you could see there was a lot of smoke, smoke off—not too far off in the distance. I'd say maybe around Washington, which is about, maybe another, well, maybe a mile or so up in front of us, maybe not that far.

So, anyway, then we seen some people walking on the street, and a bunch of commotion, so we heard people saying, "You can't get through anyway."

Q. Let me interrupt for a moment. As to Mr. Hamburger, I think you have been referring to him as Chuck; is that right?

A. Right, Chuck, yes.

[Tr. 481] Q. As to Mr. Hamburger, was he a coin collector, to your knowledge?

A. Oh, yeah, he was a real coin collector.

Q. And so far as you know, over what period of time had he been collecting coins?

A. Four or five years anyway, that I know of. I couldn't tell you when he started.

Q. Was he a coin dealer?

A. Yes. Well, see, when everybody calls dealers, the people don't know what they mean by dealers. Dealers are actually somebody that makes a living at it, but there are people that they call dealers are not dealers; they are vest pocket dealers. So he was a dealer; he had cards made up, but he had a full-time job doing drafting, but it wasn't his livelihood, in other words.

Q. Would it be accurate to say that coins were a part-time business with him?

A. When you say "part time", he might not put eight hours like he does on a job, but I think every collector will put more than—more hours in that actually on the side, the study or selling them or contacting somebody, more than eight hours really when you add it up.

Q. All right. Going back then to August 14, after you arrived in Los Angeles what did you do then?

A. Well then we heard a commotion that we couldn't get through, so we comes back down, down back on the Freeway, [Tr. 482] and we comes back towards Santa Ana.

While we were driving along, we were just talking about that, and one thing and another about coins, and we got up closer to Orange, he says, "Hey, how would you like to stop over at my house?" I says, "Fine." "Well, we will play a little cards," you know. You know, I never played cards with the guy before. I figured, well, all right.

So, anyway, we goes and we plays cards. Oh, incidentally, we got to this house, I couldn't swear, but we got to this house somewhere around quarter to ten, maybe a little after ten. I don't know exactly, but it was around there. And we started playing cards. So first thing he does, he likes to drink a little bit. I mean I do too, but that particular night I didn't. But anyway, so anyway, he had himself, I can't even tell you what he was drinking. He had, whether it was water and Bourbon, or one thing and another.

Q. He did have something of an alcoholic nature to drink?

A. Right. So anyway, so he starts drinking, getting a little—at the end I am winning a little bit. Never—I never played with the guy before. You can't tell until you play a guy with cards, see, so he starts getting a little salty, because I think it was the liquor, see, but he wasn't that—just feeling a little good.

So I says, "Well, I'd better go." I says, "After all, [Tr. 483] it's getting late, and I should be home." And if I am not mistaken, one of the excuses I gave him, I said, "I'd like to go home, I want to watch the Joe Pyne program." I said, "I never like to miss that on Saturday."

So, we leaves, and when we got to my house, and I am almost positive of this, that it wasn't either about five minutes to 12 or five after 12, something like that, and that's when he took his car there and then left.

Q. Now, is there anything which aids you in recalling the hour at which you arrived home?

A. Well, because, first of all, when it was getting around 12 o'clock, it hit me, it's getting a little late. Now, my wife knows I am out, but she don't expect me, if I am going to be out after 12, I give her a buzz. I usually call her. And not only that, I wanted to get home because Joe Pyne is after 11:30, and I hate to miss his guest, you know.

Q. Then after you got home what did you do?

A. Now, that's the thing. Now, that's the drawback right there. Now, if I—I don't recall exactly when I told him I wanted to get home, to watch Joe Pyne, that was an excuse to him, because I didn't want to draw it too much longer, but when I got home, now, I am almost sure, I either watched Joe Pyne, or I went to bed. I don't recall that.

Q. Let me ask you this:——

A. I think I probably watched it.

[Tr. 484] Q. What time did you get up in the morning on August 15?

A. Oh,——

Q. As nearly as you can recall?

A. I would say—

Q. Long time ago.

A. I would say no later than ten for sure. I don't think it would be any later than 9:30, because I like to get up early.

Q. All right. From the time you arrived home around

midnight until the time you got up in the morning some time around ten a.m., did you at any time leave your home on the evening of August 14-15?

A. Did you ask me did I leave my home at what time, sir?

Q. The time period to which I direct myself is from midnight—well, let's say ten minutes after midnight on August 15 until 9:30 the next morning, did you at any time leave you home then?

A. No. I would like to interject, now, you pin me right down to a time. Now, I did leave my house, now. Now, whether it was around 11o'clock or 10:30, I went to car wash and come back.

Q. Was this on August 15?

A. This was on a Sunday, This I know.

Q. I see. Well, let me restate the question then: [Tr. 485] From ten minutes after 12 on August 15 until eight o'clock the next morning did you leave you home at all?

A. No.

Q. Now, backing up a little bit into the months of February and March, 1965, did you during either of those months have occasion to visit the Coinarama in the City of Hawthorne?

A. I go to Coinarama every Wednesday night, and It's very seldom that I have ever missed going to Coinarama. It's something that you just can't help—you look forward to going there Wednesday night. It's excitement, the wheeling and the dealing. It's something that I—I still want to do it today. It's enjoyable. I go all the time.

Q. And as nearly as you can recall, did you go there every Wednesday night during these months, February and March of 1965?

A. Oh, yes.

Q. All right. On any occasion during which you visited Coinarama did you purchase any medals or tokens?

A. Yes, I did.

Q. Can you recall the date of that occasion?

A. Now, if you want to ask me specifically the date, I could tell you maybe within a—you know, as a matter of fact, I can't really tell you if it was actually in February or if it was actually in March, but within that area. Take a two-month period, I would say definitely it was in that [Tr. 486] time.

Q. All right. I show you People's Exhibit 11-A, and ask

you if you recognize any of the contents of that exhibit?

A. Well, yes. Now, incidentally, what I see before me, this is not the—there is more to—that I have than just this before me.

Q. Well, the question, Mr. Chimel, do you recognize any of the contents of the exhibit?

A. Yes, I do.

Q. And what do you recognize them to be?

A. Well, we have foreign coins here; we have tokens, and we do have medals.

Q. And when was the first time that you saw these particular coins and medals?

A. At the time that I purchased then down at Coinarama.

Q. You did purchase these specific coins and medals at Coinarama?

A. Yes, I did.

Q. Was anyone else present when you made that purchase?

A. Morris Diehl had his table right next to me. He seen what happened.

Q. From whom did you purchase these?

A. I was asked to speak—I don't know the gentleman's name. I had never seen him before, nor have I seen him since, but he did have a—I do recall one thing, though: He did have a reddish complexion.

[Tr. 487] Q. Now, the contents of Exhibit 11-A which are before you, do they comprise everything which you purchased at Coinarama on that occasion in February or March?

A. Is all the contents here, you say?

Q. Yes.

A. Oh, no, all the contents is not here. (Indicating.)

Q. All right. In addition to what's before you, what did you purchase?

A. Now, as close as I can recall, there's two boxes: there's an oblong-shaped box, and there's a square box. Now, in this square box, most all these medals and tokens were in a long, oblong box. There's other medals in there than just this, and in the square box I know for sure now there's two rolls of nickels. I remember distinctly seeing some war nickels. That's the first thing: I do remember this.

And there's also a bunch of transportation tokens, real

small transportation tokens, some were plastic and different material.

And then there were some pennies in there, and then some—a little few odds and ends. I couldn't tell you—try to recall them. I think there was another tube in there. I don't remember all of it.

Q. This was all comprised in the articles which you purchased at Coinarama in February or March on the occasion when Mr. Diehl was present?

[Tr. 488] A. Yes, it is.

Q. Now, did you at that time, or any time thereafter, learn that these particular items had been stolen from Mr. or Mrs. Pulati?

A. No.

Mr. Monroe: Your Honor, I am wondering——

The Court: Do you think this is a good place to stop?

Mr. Monroe: I think maybe it is, Your Honor.

The Court: All right. Be sure and take care of the coins.

Mr. Monroe: I will do that, Your Honor.

The Court: Members of the Jury, we will recess until 1:30 this afternoon. Please have the Jury in the box at 1:30, Mr. Bailiff.

(Noon recess.)

The Court: Stipulate the Members of the Jury are all present and in the box?

Mr. Monroe: So stipulate, Your Honor.

The Court: Proceed.

Mr. Monroe: Your Honor, I think Mr. Enright will be agreeable to interrupting the testimony of Mr. Chimel in order to take Mr. Jones out of order.

The Court: All right. Call Mr. Jones.

Mr. Monroe: Mr. Jones, please.

[Tr. 489] EVERETT W. JONES, produced as a witness on behalf of the Defendant, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Monroe:

Q. Mr. Jones, what is your occupation, sir?

A. I am an attorney at law.

Q. Where are your offices located, sir?

A. 1122 Crenshaw Boulevard, Torrance, California.

Q. Were you so employed on August 14, 1965, and at all times thereafter?

A. Yes.

Q. Did you at any time represent a Mr. Charles Thomas Hamburger?

A. Yes.

Q. Do you know approximately when—during approximately what period this representation took place?

A. About August of last year.

Q. I see. Now, did you then, or have you at any other time represented Mr. Ted Steven Chimel, the defendant in this action?

A. No, I have not.

Mr. Monroe: I see. I have no further questions.

Cross-examination.

By Mr. Enright:

Q. Mr. Jones, did you appear at the Orange Police Department with Mr. Chimel and Mr. Hamburger?

[Tr. 490] A. I appeared at the Orange Police Department, but not with Mr. Chimel and Mr. Hamburger. We all three appeared there. I appeared, representing Mr. Hamburger.

Q. Had you been in contact with Detective Del Coma?

A. Of the——

Q. Of the Orange Police Department, prior to that?

A. Yes, I had, on several occasions.

Q. When you were there, directing your attention to a time when you, Mr. Chimel, and Mr. Hamburger were at the police station, did you advise Mr. Del Coma that you were not representing Mr. Chimel?

A. Yes, I did. I made it entirely plain at all times that I was there for an extremely limited purpose, and that purpose was to negotiate the settlement of the civil claim, and the police department undertook to represent a claimant in a civil claim, and in handling those negotiations I represented only Charles Hamburger.

Q. Did you tell that to Detective Del Coma?

A. Definitely.

Q. Did you tell Detective Del Coma prior to that on the phone that you were representing the suspects in this B.R. burglary?

A. No, I did not.

Q. Did a Detective Salegy take some of the stolen property out of your office?

A. Am I allowed to object, Your Honor? I think the [Tr. 491] question is objectionable. It assumes facts not in evidence.

Mr. Monroe: I will object, Your Honor, because that does assume facts not in evidence.

By Mr. Enright:

Q. Did you happen to have some coins in your office?

A. Frequently, yes.

Q. Did you happen to have some coins when Detective Salegy arrived at your office one day?

A. Again, may I object to the question as too vague? I don't know if I am——

Q. Well now, let's see how we can get it straightened out. Maybe you are used to dealing with coins and police departments?

A. That is correct.

Q. Did you happen to have coins on your desk when a detective walked in and says, "Hey, that's part of the loot of the B.R. burglary."?

A. No. To the best of my recollection, in my entire practice no detective has ever walked in and said anything similar to that.

Q. Did you say, "Take the coins; I want no part of them."?

A. No, I have never used language like that.

Q. Did you in substance tell him to do that?

A. No; definitely not.

Q. Did you get coins from Mr. Hamburger?

[Tr. 492] A. I am going to object, Your Honor, on the grounds that the evidence called for is privileged. It is between an attorney and client.

The Court: Sustained.

By Mr. Enright:

Q. Mr. Hamburger didn't approach you to tell you that

he and Mr. Chimel wanted to return the coins in the burglary.

Mr. Monroe: I think this calls for the same privilege, Your Honor.

The Court: All right. Sustained.

By Mr. Enright:

Q. Are you in the habit of dealing with stolen property?

By Mr. Monroe:

Oh, I will object to that question, Your Honor.

The Witness: No.

Mr. Monroe: It assumes facts not in evidence.

The Court. Sustained.

Mr. Monroe: I think it's misconduct on the part of the District Attorney, and the Jury should be admonished to that effect.

Mr. Enright: It is no misconduct, Your Honor. I intend to contact the Bar Association when this case is over with.

Mr. Monroe: I will object to that as prejudicial to this case, Your Honor, being presented in front of the Jury.

The Court: All we are concerned with here are the three counts of this Information. Let's stick to the Rules of [Tr. 493] Evidence, the law on the three counts of the Information.

Jury will disregard everything else except which pertains to the matters involved in the Information.

The Witness: If I may, Your Honor, I want to enter an objection on my own behalf.

Mr. Enright: You have no right to object.

The Witness: I am appearing here as an officer of this court.

Mr. Enright: He is not, Your Honor. He is appearing here as a witness for the Defendant charged with a burglary.

The Witness: Testifying as an officer of this court, and I believe that I am entitled to the treatment and respect that that position connotes.

Mr. Enright: He is here as a witness. He has no other status, Your Honor, except as a witness in this courtroom. He's not trying this case.

Mr. Monroe: And as a witness he is entitled to not be abused.

Mr. Enright: And as a witness he is entitled not to make any statements other than to answer questions.

The Court: I think—I don't think he need to answer your question, if he wanted to take the ground that it might incriminate him. That would be optional with the witness, but I don't—I want to know something a little more definite, Mr. Enright, about an attorney before his integrity is challenged, particularly before a jury.

[Tr. 494] I may say to the Jury, so far as I know—I have never met Mr. Jones before, I know nothing about—will, I just never saw him until he walked in the courtroom today, never heard of him. So I can have no opinion whatsoever one way or the other about Mr. Jones.

Have you ever seen me before that you can remember?

The Witness: Not to my recollection, Your Honor.

The Court: All right.

By Mr. Enright:

Q. Mr. Jones, did you receive coins in your office from Mr. Hamburger with the knowledge that they were stolen?

Mr. Monroe: Objection, beyond the scope of the Direct.

The Court: Overruled.

The Witness: No.

By Mr. Enright:

Q. Then what were you doing down at the Orange Police Department negotiating for their return?

A. I was never in the Orange Police Department negotiating for the return of coins that I knew were stolen. I was in the Orange Police Department negotiating for the return of coins.

Q. You didn't bother to ask where they came from?

A. Oh. I had detailed——

Mr. Monroe: Objection, Your Honor. This calls for privileged information; beyond the scope of the Direct.

The Court: Overruled. Apparently he wants to answer.

The Witness: I have detailed information as to where they came from.

[Tr. 495] By Mr. Enright:

Q. And you weren't negotiating with Mr. Slocum to return these coins to him for a civil release?

A. I am sorry, you will have to identify Mr. Slocum for me.

Q. B. R. Slocum, the gentleman whose coin shop was burglarized.

A. Yes. What was the question?

Q. You were negotiating with him through the Orange Police Department for the return of these coins for a civil release, were you not?

A. May I explain, Your Honor?

Q. Yes, or no?

A. I am unable to answer that ——

Mr. Monroe: Your Honor, counsel objected vehemently the last time I asked for a yes or no answer.

Mr. Enright: Not vehemently.

Mr. Monroe: He does exactly the same thing to this witness, Your Honor.

Mr. Enright: Oh, no; you were asking yes or no to Mrs. Pulati all morning.

The Court: Well, can you answer yes or no and then explain your answer?

The Witness: I am unable to answer yes or no. I can explain.

The Court: Well, do you want him to explain?

Mr. Enright: Sure, I'd like to hear him explain.

[Tr. 496] The Witness: I conducted negotiations with the police department of the City of Torrance for some considerable time, and was later put in touch with the police department of the City of Orange, who purported, or the detectives then purported to represent the man who was identified as Mr. Slocum today.

I have no knowledge that the coins were stolen. In fact, I believe quite the contrary, based on the detailed information I have; relates to an entirely different crime from theft; implicates a number of people that I do not know are before the Court, including several members of the police department.

By Mr. Enright:

Q. Oh, it does, huh?

A. Yes.

Q. You didn't tell Mr. Salegy on the phone up there when you got these coins that you have received some coins, and you are wondering if you are violating the law, Mr. Salegy, the Detective up in Torrance?

A. I carefully contacted the police department when I was first contacted by Mr. Hamburger, to see if I could negotiate this matter without violating the law. I was advised by the Torrance Police Department, Detectives Salegy and Davis, that I could handle the matter in the fashion that I proposed to do. I did thereafter undertake to, and did return the coins.

Q. You returned them, or were they taken from your [Tr. 497] office?

A. I returned them.

Q. Didn't Detective Salegy come in and say, "What are those coins doing here?" And didn't he take them?

A. Never happened.

Q. How did he get them? How did Detective Salegy get the coins?

A. I notified the police department approximately one month before the coins were given to me. I made arrangements for them to come, and then on the day—the coins were returned in two different times from my office.

On the day that the first part of the coins were returned Detective Salegy came down and picked them up. I forget how much later—a week later, something like that, an officer, Pupkoff, came up and picked up the remainder, on my telephone call.

Q. You didn't call Detective Salegy to come down the first time, did you, on that day?

A. No. The detective called me and asked if he could come down.

Q. He called and asked to come down?

A. Yes.

Q. He didn't walk in and find you with the coins on your desk?

A. Definitely not. In fact, the coins were never on my desk.

[Tr. 498] Q. They were never in sight of Detective Salegy?

A. No. I kept them under lock and key while they were in my possession until I surrendered them to the police.

Q. You wouldn't deal with coins that you knew were stolen, would you?

Mr. Monroe: Oh, I object to that as asked and answered; it calls for a conclusion.

The Court: Sustained.

Mr. Enright: I have no other questions of this witness.

Redirect-examination.

By Mr. Monroe:

Q. Mr. Jones, during this entire period of time you did not at any time represent Mr. Chimel; is that correct?

A. That is correct.

Mr. Monroe: I have no further questions.

The Court: All right. You may step down.

Mr. Monroe: May this witness be excused, Your Honor?

The Court: May Mr. Jones be excused?

Mr. Enright: Yes, Your Honor.

The Court: You may go, if you care to, Mr. Jones.

The Witness: Thank you, Your Honor.

Mr. Monroe: Mr. Chimel, resume the stand, please.

The Court: Does a Juror want to ask a question?

Juror Number 10: I would like to ask that Mr. Chimel speak a little more slowly, please. He is talking too fast. I can't understand him.

[Tr. 499] Ted Steven Chimel, produced as a witness in his own behalf, having previously been duly sworn, resumed the stand, and was examined and testified further as follows:

The Court: If you would, Mr. Chimel, you have a habit of speaking rather fast.

The Witness: Okay, Your Honor.

The Court: Some people tell me I speak too slow. Well, you speak a little too fast.

The Witness: I was trying to talk somebody into buying a coin.

Mr. Monroe: Sometimes I speak a little too soft, so we all have problems.

Direct examination continued.

By Mr. Monroe:

Q. Mr. Chimel, going back now to the two months preceding August 14, 1965, did you have occasion to meet with and talk to Mr. Slocum at any time during that period?

A. Oh, yes.

Q. Incidentally, how long had you known Mr. Slocum?

A. Three, three and a half, four years, perhaps.

Q. Now, in particular did you have occasion to see Mr. Slocum at his home some time during the month of July, 1965?

A. Yes, I did.

Q. Was anyone else present at that conversation?

[Tr. 500] A. No, there was not.

Q. Did you have any other conversation with him at his home during July of 1965?

A. Yes.

Q. How many conversations did you have with him at his home?

A. Perhaps three, four.

Q. All right. Now, was anyone else present at any of these three or four conversations?

A. His wife might have been at one time.

Q. Can you recall whether this was the first or one of the intermediate, or perhaps the last conversation at which she may have been present?

A. I can't recall. I just recall one thing. I believe Russ Mays was there at one time. (sic)

Q. Now, on one of these particular occasions at Mr. Slocum's home was the subject of insurance discussed?

A. That particular occasion was on the outside of his home, yes.

Q. Was anyone else present at that time?

A. No, sir.

Q. It was just you and Mr. Slocum?

A. Yes.

Q. And then will you tell the Jury what was said, as nearly as you can recall, what was said by Mr. Slocum and what was said by you on that occasion?

[Tr. 501] Mr. Enright: Which occasion is this?

Mr. Monroe: That is the occasion in July outside his

home, at which no one else was present, at which insurance was discussed.

The Witness: That particular time the reason I went over there I had some books that I picked up, called "What Should I Save", and then it was connected with another corporation that folded, so the book therefore folded with it, and I were to take all these books, and Mr. B. R. said he would buy them from me. So I brought them over to his house.

Well now, we got to shooting the—we got talking, him and I, on the outside, by the station wagon. One thing led to another, and before this even happened this was brought up one time before this second time. He says——

By Mr. Monroe:

Q. Well, on this occasion; on this occasion?

A. On this occasion he said to me, "I am hurting pretty bad." I says, "Oh, what do you mean you are hurting pretty bad?" He says, "Oh, business is not too good." I says, "Well, if it's that bad, why are you buying my books?" He said, "Well, I can make a buck on it." I said I could understand.

So he says to me, "I got a lot of coins; you know the only way I can get my money out of it is through insurance. Otherwise I'd have to wait until I sold them at retail [Tr. 502] prices, and business is very slow." So then he said to me, "I wish I had a lot more insurance." And I said to him at that time, I says—no, I did not say to him at that time, because I said to him before then, I says, "Well, did you tell me you had $10,000 worth of insurance?" He says, "Yeah, but I used to have a hundred ten thousand, and I dropped it to 50,000, and right now I only got 10,000."

So one thing led to another, and he says to me—excuse my language, but he says, "I'd like to have my place wiped out." I says, "What are you talking about, 'wiped out'?" He says, "Just that; that's the only way I can collect on my insurance, but I need more insurance money." He said he just dropped his premium to 10,000 from 50,000.

Q. Was anything else said on that occasion?

A. Then we got to talking about my book again, and various other things, and right back to the insurance again,

came up again, and well, I don't know if this guy was—excuse me. I don't know——

Q. All we are concerned with is what was said, Mr. Chimel.

A. Okay, fine.

Q. Did you think Mr. Slocum was serious?

A. That's what I started to say. No. It's really hard to say. How would you really know?

Q. Incidentally, what kind of a car was Mr. Slocum driving at that time?

[Tr. 503] A. At that time he was driving a Volkswagen.

Q. Now, did you have any other conversation with him during the month of July in which this subject was mentioned, the subject of insurance?

A. I can't really recall if this was before the time I just spoke of or after. I believe it was before. I was in his store.

Q. Now, was anyone else present?

A. I would say there was, but I can't really recall; but I'm sure there was somebody there, because I remember someone being there. I do remember that.

Q. All right. Approximately when did this conversation take place?

A. I would say in the middle part of July.

Q. This was at his store in Orange?

A. In his store in Orange, right.

Q. What was said on that occasion?

A. We got to talking about coins again, and then he says, he says, "How come you never went in with me on this teletype?" I says, "Look, as far as I am concerned, I think it's a bad risk. You know more about the business than I will ever know, so why should I go into something I am not too familiar with?"

He says, "Well, maybe it was better off that you didn't because I am losing money on it." Then he said, "Look at this place here, for instance. It is a hole in the wall [Tr. 504] right now, and my insurance is only $10,000, and this place is easy to get into." As a matter of fact, he said there was a skylight above, he says, "You can get in through that way."

So I am just going along, and I says to him, I says, "Well, what would you want to do something like that for, or something of this nature?" And he says, "Well, I need some money. I think I will raise my insurance."

Now, I don't know if that's word for word now, but this is about the——

Q. All right. Now, did you understand his remarks to imply that a burglary should be committed?

A. Well, definitely.

Mr. Enright: Your Honor, it is asking for a conclusion.

The Court: Sustained.

Mr. Monroe: I will withdraw the question.

By Mr. Monroe:

Q. Did you at any time, Mr. Chimel, have any other conversations with Mr. Slocum regarding this subject?

A. This definitely came up a few times in his shop.

Q. At his place of business, this was after the conversations to which you have just testified?

A. Yes.

Q. All right. Now, prior to August of 1965 how many times had you visited Mr. Slocum's home?

A. I would say it is fair to say a half a dozen times.

[Tr. 505] Q. And can you give the Jury an idea of how many times you had visited his place of business, either in Fullerton or in Orange prior to August of 1965?

A. Only one time in Fullerton I visited his place. He took me down there with a gentleman called Russ Mays (sic) to his business.

Q. Excuse me, Mr. Chimel, when you say "he took me down there." ——

A. Mr. Slocum took me down there.

Q. Took you where?

A. To his place of business in Fullerton.

Q. I see. Approximately when was this?

A. December, January.

Q. As nearly as you can recall, how many times had you been in Mr. Slocum's store in Orange?

A. Dozen different times.

Q. I am going to invite your attention to—if I don't break all the fixtures first, I will invite your attention to People's Eight, the chart of the Money Vault.

Now, are you able to see this chart all right, Mr. Chimel? Would you like to approach it more closely?

A. No. I can see it quite——

Q. All right. With reference then to the front portion,

which is labeled "Coin Shop", I take it that you had been in this portion of the premises?

A. Yes.

Q. All right. Now, directly behind that there is an [Tr. 506] area which appears to be separated, or partially separated by some sort of partition, according to the diagram. Had you ever been in that area?

A. No.

Q. Now, directly behind that is another, what would appear to be another room with a similar partition. Had you ever been in that area?

A. Oh, no.

Q. Are you very sure?

A. I am positive.

Q. Mr. Chimel, did you burglarize the Money Vault?

A. No. I did not.

Q. Did you have anything to do in any way with——

A. No.

Q. ——with any burglary of the Money Vault?

A. None whatsoever.

Q. Did you burglarize the home of Mr. and Mrs. Pulati?

A. I certainly did not.

Q. Did you have anything to do in any way with the burglary of their home?

A. I did not.

Q. And did you at any time before the commencement of this case know that the coins and medals which Mrs. Pulati has identified, and which you have identified, and which Mr. Diehl has identified, did you at any time before the commencement of this case know that they belonged to Mr. and Mrs. [Tr. 507] Pulati?

A. Oh no.

Mr. Monroe: No further questions, Your Honor.

Cross-examination.

By Mr. Enright:

Q. Now, you knew this before you came to court on this case, didn't you?

A. Knew what, sir?

Q. That the coins that you have, you had, belonged to Mrs. Pulati?

A. I did not.

Q. You didn't know before today?

A. Oh, yes, I knew before today. Yes.

Q. And I think counsel had a, your attorney had a copy of all our reports; that's how you knew it; is that your statement?

A. Not exactly.

Q. Well, how did you know it?

A. Because Mr. Pulati and Mrs. Pulati told me they identified some of the medals.

Q. And in the reports that your counsel had there was a report that indicated they identified the medals back in August of 1965, September, 1965, wasn't there?

A. I cannot remember that.

Q. But do you remember discussing that with your attorney?

A. To be very—I can't quite remember it, no.

Mr. Monroe: Mr. Chimel, if you don't understand a question, merely ask Mr. Enright, and I am sure he will clear it up for you.

By Mr. Enright:

Q. Now, is it your testimony that on August 14, that some unknown person called you and was talking about coins, and was talking about Mr. Slocum's place, and indicated that he was going to knock the place off; is that correct?

A. Substance of it is, yes.

Q. Do you know who that person is?

A. No, I do not.

Q. How did he happen to call you?

A. He called me previous in the past when I ran an ad in the paper.

Q. Did you you ever ask his name?

A. Yes—yes, I did.

Q. Did you ever get his phone number to call him back?

A. No, I didn't.

Q. Did you ever deal with him in coins as a result of your conversations on the phone?

A. No, I haven't.

Q. He calls, and he says he thinks he is going to knock

off the Money Vault in Orange; that's on August 14; is that right?

A. Yes.

Q. Then Mr. Ambrose rides up on the bike; is that [Tr. 509] right?

A. That's right.

Q. Was this about 6:30 or seven o'clock in the evening?

A. I thought it was earlier myself.

Q. Well, you heard Mr. Ambrose testify around 6:30 or seven. Was it in that general vicinity?

A. It could be, yes.

Q. And you told Mr. Ambrose that you had a big deal going?

A. That's right.

Q. Did you tell Mr. Ambrose that you were going to make a large sum of money, in the area of $60,000, and that you knew a coin shop that was in operation about a month? Did you tell him that?

A. Yes, I did.

Q. Did Mr. Ambrose tell you that this was crazy for you to be thinking of something like this, and that you shouldn't do it?

A. He didn't use that terminology, no.

Q. But did he tell you he thought you shouldn't do this, words to that effect?

A. I don't believe he even got to that.

Q. Well, you didn't say to him, "We have the thing all set," and show him the Walkie-Talkies?

A. Yes, I said that.

Q. And this was after someone on the phone told you [Tr. 510] he was going to knock the place over?

A. Wipe the place out, is what he used.

Q. "Wipe the place out." You understood that to mean commit a burglary; is that right? You think it was going to be a—well, strike that.

What do you think "wipe the place out" meant?

A. Nothing—I do know what it meant, more or less to rob a place, but this to me was a joke. It didn't have any significance.

Q. It didn't have any significance after you had been talking to Mr. Slocum several times during that very—during the previous month, and Mr. Slocum was talking about a burglary of his place with you?

A. I never even put either one of them together. It was —it wasn't even important to me, really.

Q. And you didn't feel that you should tell your friend, Mr. Ambrose, that it was just something that you heard over the phone, and it was a gag?

A. No, I never even mentioned to him—I don't know how to express it. It was a joke—it was—well, it was funny. I was impressing him. Well, I had never even thought about it whether he'd take it serious or nor serious. It didn't occur to me really.

Q. Was Mr. Ambrose asking you to go bike riding?

A. Yes.

Q. And you went out that evening; is that correct?

[Tr. 511] A. That is correct.

Q. Now, on the following day, August 15, you remember Mr. Ambrose talking to you on that day?

A. Yes, I do.

Q. And you were here when Mr. Ambrose testified, were you not?

A. I certainly was.

Q. And do you recall Mr. Ambrose testifying that when he spoke to you on August 15, that you told him that you had gone through two walls, but after getting through the second wall found some black wires, and did not commit the burglary?

A. I would say it's very close, yes.

Q. That's very close to what you told him; is that right?

A. That is correct.

Q. And then later in the conversation you indicated that you had only made a—you had only been kidding, making a big deal out of the whole thing; is that right?

A. That is correct,

Q. Where did you get this business about going through two walls?

A. Now, that's the farfetched thing. Okay. Come Sunday morning, now, I don't know whether it was about 8:30, 9:30, or around ten, but it was in the morning, this guy called me up again.

Q. Oh, he called you up again?

[Tr. 512] A. That's right—that sounds silly, but that is exactly right.

Q. At what time in the morning? Go ahead, 8:30 or nine in the morning? Same voice?

A. Same voice. Without a doubt. And he says to me—I answers and he says to me, "Say, I couldn't get in that place." And right away I am saying to myself. "This jerk calling me up," you know, so anyway, he says to me, "No, I couldn't get in that way. I got in through one wall" —or two walls, whatever it was at the time that I told you, and he says, "I ran into some wires, and I couldn't get in."

So I says to him, "Lookit, if you want to buy some coins from me, come on over, buy some coins, but don't give me this"—kind of—shall I say what I said?

Q. Go ahead.

A. "Don't give me this line of crap. This is getting a little out of focus." And that was it, and that was the end of the conversation.

Q. So he told you he went through two walls, and he couldn't get in. Did he tell you about the wires?

A. I don't recall if he told me two walls or one wall. I don't recall that part. If I said that, that's what he told me.

Q. Oh, there is no question you said that to Mr. Ambrose?

A. If that's what I said to Mr. Ambrose, that's [Tr. 513] exactly what happened.

Q. Wait a minute. We are dealing with two conversations. I am talking about the conversation, first of all, that you had with Mr. Ambrose on August 15.

A. Right.

Q. Now, in that conversation you did say that you went through two walls, saw some wires, and after going through the second wall, went back and didn't complete the job; is that right?

A. No, I cannot quite remember that.

Q. Well, do you remember two walls, going through two walls, in your conversation to Ambrose?

A. I don't remember if I told him that, or if that guy told me this, or—I don't remember, specifically wall or walls.

Q. Well, did you tell Ambrose that a guy told you this, or did you tell Ambrose this is what you did?

A. No, I never said nothing. Oh, I see. No. I says to him, "I couldn't get in the place," I says to him. I says, "I went through a wall" or "two walls"—whatever the case may be, "and came into some black wires and couldn't get in."

Q. That's what you told Ambrose?

A. Yes.

Q. But you are not sure that the man who spoke to you on the phone, this mystery phone caller, what he said to you [Tr. 514] regarding the walls in his conversation; is that right?

A. Oh, no. I don't quite remember what the guy on the phone told me, nor what I quite told Tom neither. That's what I mean. I don't mean I can't remember either—what I would remember on the phone, I would remember what I told Tom, but I can't remember what I told Tom, I certainly would remember what the guy on the phone told me, but I can't say specifically.

Q. You were not attempting to relate a message that you received on the phone from somebody when you were talking to Mr. Ambrose; you were telling him as if you went through the walls; is that correct? You were not stating, "Somebody called me up and said they went through two walls."?

A. Right.

Q. You were saying, "I went through two walls."?

A. Right, or wall, whatever it was.

Q. Why did you and Chuck Hamburger buy the Walkie-Talkies?

A. We were supposed to have gone out earlier that afternoon to try them out in the field, because we anticipated on going out to the desert and using them to do some hunting. When Mr. Hamburger never did show up to my house.

Q. How long had you known Mr. Hamburger?

A. Year and a half, perhaps, maybe two years, before then.

Q. And he also was a vest pocket coin collector, [Tr. 515] pretty much like yourself?

A. A dealer more than a collector.

Q. Dealer. You and he were about on a par as dealers go, using that rough term, not professional dealers, but people who sell coins?

A. I don't understand. When you say "professional" what do you mean?

Q. Well, I think you drew the distinction yourself between dealer and people who do this sort of—people who are dealers for a living and those who do it as a hobby or avocation; you indicated that those who don't do it as a

living are sometimes called dealers, but they are vest pocket dealers?

A. Yes.

Q. Would you describe yourself and Mr. Hamburger in the same light?

A. Very much so.

Q. But you both were very much interested in coins; is that correct.

A. That's correct.

Q. Now, do you recall going down to the Lido Coin Shop and speaking to Mr. Jack Parsons?

A. That is correct.

Q. And this was right after the B. R. Slocum burglary, was it not?

A. Yes, that's right.

[Tr. 516] Q. Do you recall going over to a coffee shop with him and having coffee across the way from the Lido Coin Shop?

A. That's correct.

Q. That was at the Snack Shop?

A. That's correct.

The Court: What was that gentleman's name?

Mr. Enright: Mr. Parsons.

The Court: Thank you.

By Mr. Enright:

Q. Do you recall telling Mr. Parsons that you had pulled the BR—BR's job, and you may have to go to jail?

A. That's correct.

Q. And you recall telling him that your wife may have to come around and sell some coins from time to time; and Mr. Parsons was concerned whether or not these coins were part of the burglary?

A. That is not correct, about him saying, asking me if they were part of the burglary; but I did tell him about wanting to sell coins periodically, that's correct.

Q. And do you recall Mr. Parsons asking you why you did not give back the coins from the BR job, and you indicated that it had to do—had to do something with typewriters? Do you recall that conversation?

A. I cannot really say that that's part, no.

Q. By the way, what were you doing with all those type-

writers Mr. Ambrose saw in the back of your house there? [Tr. 517] Do you recall his testimony he saw a room full of typewriters, IBM electric typewriters?

A. Yes, I do.

Q. You are not a typewriter salesman?

A. No, I'm not, but you said "IBM", so there was no IBM's.

Q. There weren't any IBM's?

A. That's correct.

Q. What kind were there?

A. Remington's.

Q. Remington's?

A. Yes.

Q. How many were there?

A. Either three or four.

Q. Only three or four? Could there possibly have been five or six?

A. Oh, no, no, no, not six. I was going to say, perhaps five, but no, not six. No. Four, I'd say.

Q. You don't remember mentioning to Mr. Parsons that the reason that you don't return the coins back to Mr. Slocum is because the coins in some way had something to to do with typewriters? You don't recall that?

A. I don't recall it, but I could have very easily have said it.

Q. Now, ——

The Court: May I make a remark?

[Tr. 518] Mr. Enright: Yes.

The Court: This is directed to everyone in the courtroom. Sometimes we develop habits we don't realize we have, as, for instance, someone will say "the lights are shining," and you may nod your head in approval, or a negative remark, why, you may shake your head.

Now, as I say, I have noted an instance or two when some witness, not this witness that I recall, but other witnesses have made statements that certain persons in the room have nodded or shaken their heads a little. Now, please if you have such a habit, any of you, would you try to restrain yourselves? I am sure that the little—what I have spoken of has been involuntary.

Proceed.

By Mr. Enright:

Q. Now, on the evening of August 14 you and Mr. Hamburger were driving up towards Watts; is that correct?

A. Yes.

Q. And you wanted to see the goings-on up there; is that right?

A. That's right.

Q. However, you couldn't get through. I assume the police or the State Troopers, the State National Guards' barricades, or something; is that correct?

A. No, not at all. We heard some people saying, "You can't go past Washington Street," so we figured why even [Tr. 519] bother then.

Q. And then you came back down to Orange; is that right?

A. No.

Q. I mean Orange County?

A. Yes.

Q. And then went over to Mr. Hamburger's house?

A. That's correct.

Q. Where did Hamburger live then?

A. He lived on Donegal Drive. This is in Garden Grove. I don't even know the cross street. I don't know the address, but I know, I think, how to get there.

Q. And it is in Garden Grove?

A. Yes, it is.

Q. By the way, do you know where Mr. Hamburger is now?

A. Your guess is as good as mine.

Q. You haven't been keeping in touch with each other recently?

A. We tried to get hold of him, if that's what you mean.

Q. But you and he have not been seeing each other?

A. No.

Q. Now, when you go to Mr. Hamburger's house that evening, you say you arrived there around ten p.m.; you and he started playing cards; is that correct?

A. Not right away, no.

[Tr. 520] Q. But you eventually started playing cards?

A. That's right.

Q. And he has a drink and apparently you are winning,

and he becomes a little salty, or something like that; is that correct?

A. That would be the climax of it, yes.

Q. What kind of cards were you playing?

A. Poker.

Q. Just the two of you?

A. That's exactly right.

Q. And after a while you indicate that you want to go home to watch the Joe Pyne show, at least this is the excuse you give Mr. Hamburger?

A. That's right.

Q. You are a rather devoted Joe Pyne watcher, though, are you not, like to watch his guests and such?

A. The guests, yeah.

Q. And you go home that evening and you don't recall whether or not you watched Joe Pyne or went to bed; is that your testimony?

A. That sounds funny to you, I realize it, but, yes.

Q. Is it that you watched so many of Joe Pyne's shows you are not sure you may have looked at it for a moment and gone to bed?

A. First of all, it was pretty far off, and second of all, I recall right in my mind my telling him that I want to [Tr. 521] watch Joe Pyne, because I want to make an excuse to more or less go, not try to insult him, so we left. (sic)

Now, after he's gone I don't—I don't remember whether I actually watched Joe Pyne or not. If I really—no, I don't really remember if I did or not, truthfully. I might have, and I might not have.

Q. In any event, you went to bed. Do you recall how soon you went to bed when you arrived home that night?

A. No; that's the question. I would have remembered that, I would certainly definitely remember if I watched Joe Pyne or not. I don't recall. No, honest.

Q. But you didn't leave the home until 12:10—from 12:10 a.m. until eight o'clock in the morning; is that right?

A. No. I don't think I was even up at eight o'clock yet.

Q. What time did you get up?

A. I don't really recall, but it couldn't have been later than 9:30 or ten. This I am sure, because I normally get up early on a Sunday during the summer.

Q. Didn't you tell us that the mystery man called at about 8:30 in the morning, the next morning?

Mr. Monroe: I don't think the witness has testified to any mystery man, Your Honor.

The Witness: That sounds sort of funny.

The Court: Well, I will be very frank to say that I cannot remember which date Defendant testified the mystery [Tr. 522] man called on him.

Mr. Monroe: It is the terminology which I object to, Your Honor.

Mr. Enright: Sunday morning.

Mr. Monroe: Which is the District Attorney's terminology.

The Court: Well, all right, would you use—

Mr. Enright: Unknown.

The Court: Unknown instead of mystery.

By Mr. Enright:

Q. The unknown man called Sunday morning; is that correct? Wasn't that your testimony?

A. That's correct.

Q. Around 8:30 in the morning, or so, something like that?

A. I don't think it was that early. I am almost sure it wasn't that early. As a matter of fact, I know it wasn't that early.

Q. Well, it couldn't be, if you were sleeping at that time; is that what you mean?

A. No.

Q. Mr. Chimel, you don't collect medals, do you?

A. No.

Q. Why did you purchase those medals up in Coinarama?

A. Basically one reason, mostly, is there was nickels in there, and what ones I seen was foreign coins; there's foreign coins, and I figured when I looked at it, medals are [Tr. 523] pretty good. I don't collect them, but people do, so I figured whatever I can make on them would be a good deal. I know I could get my money probably out of whatever else I seen there.

Q. Why didn't you pick out what you wanted?

A. He wanted to sell all of it or nothing.

Q. And what did he have? What was "all of it" composed of?

A. Now, there was more medals in there than I seen up

here. There definitely was two rolls of nickels, at least, and, oh, there was a lot of tokens, little small transportation tokens, which I have already gotten rid of those. I already sold those, and I don't know——

Q. There was medals, tokens, what else? nickels, did you say?

A. Nickels, yes, I did.

Q. What else?

A. There was other stuff in the box, but I can't—I don't really recall. The box is about, oh, maybe eight inch, ten inch square box, and it was pretty well filled.

Q. What type of box; was it a square box, eight or ten inches square?

A. Right, and about maybe two inches deep at the most.

Q. And were all the items—did you get a chance to look at all the items at the Coinarama?

A. No, no, sir.

[Tr. 524] Q. Trading is pretty busy and hectic up there; is that right?

A. No; that's not the reason why I didn't look at them all that close. Because, if I looked at them real close, and the guy may start saying, "Bah, you are too choosey," or something of this nature. I can take a glance. If it's worth it to me, I will buy. If it isn't, I will buy—or I won't buy. (sic)

Q. But when you got home you had a chance to look at all the items in there, did you not?

A. As a matter of fact, I never looked at them until maybe a couple weeks later, really.

Q. Well, couple weeks later did you look at all the items?

A. Yes.

Q. Did you make an inventory list of the items?

A. Oh, no.

Q. You don't keep inventory lists?

A. You mean specifically inventory of everything I have, you mean?

Q. Yes

A. Not everything I have; no, I don't.

Q. You didn't take an inventory list of these medals and such that were in the box?

A. No.

Q. But you did look in and see what was in there; is [Tr. 525] that right?

A. That's correct.

Q. Now, am I correct in saying that what was in there was various medals, tokens, nickels and am I leaving out anything else?

A. That roll of—half roll of pennies that you seen.

Q. That Mr. Pulati identified, the half roll of pennies?

A. Right. But hold it. Those pennies were not in that tube at that time. They were little small tokens in that tube. This I do recall.

Q. Tokens, not pennies?

A. Right.

Q. How about the cloth tab at the top, was that there?

A. Undoubtedly it was, but I don't remember that part.

Q. You didn't scratch out what was on the top?

A. No. The only thing I have ever changed was three—that I really recall changing now, was three foreign coins. I took them out of one holder and put the three coins in another holder, and then I taped some—I had some pennies I taped in a tube.

Q. But aside from the pennies and the nickels and the tokens and medals, that's all that was in there; is that correct?

A. You know, there was something else in there, but I can't really think what was in there. There was a few other [Tr. 526] little items, but I can't recall that much.

Q. Small items?

A. What do you mean by "small"?

Q. Oh, about the size of a coin?

A. I can't—to be truthful, I—, oh, I remember a couple pencils in there. I remember that. There was a bunch of stuff. I can't recall.

Q. How about a box about this size? (Indicating.)

A. This box was separately.

Q. This was separate?

A. Oh, yes.

Q. Oh. You didn't tell us about a separate box. You said you had one box.

A. No, there was one box, and there was a square box, and I started talking about the square box. I don't know what brought me to talk about the square box, but there was some reason for it. You asked me, or something, I don't recall.

Q. And there was another box now?

A. Other than this box right here, yes.

Q. But this box was there also; is that correct?

A. This box here?

Q. Yes.

A. I don't recall.

Q. A box like this?

A. Now, whether it was that box, a green box, a blue [Tr. 527] box, I couldn't tell you. Myself, I thought maybe the box was longer, but I don't recall.

Q. How about this red coin wallet, was that there also?

A. I realize that was identified, but that definitely was not there.

Q. This was not there?

A. I would almost—well, that I think I would remember if that was there or not. This I am almost sure.

Q. There is a possibility you may not remember it?

A. Something that bright you'd think a guy would remember that. I don't recall seeing that. I don't know, to be very truthful with you. I just don't think it was there, even though it was identified. I don't think so. I may be wrong.

Q. But it could have been there?

A. This could be possible, yes, that right. I am almost sure it wasn't, though.

Q. You would recall purchasing this separately, wouldn't you?

A. No. I tell you why. I buy so many of those that every time I have coins that I display I will give them the whole billfold and all with the coins in it.

Q. Just like this, red coin? (sic)

A. Pardon me?

Q. Just like this?

[Tr. 528] A. Just—

Q. Red?

A. I am sure, yes.

Q. You have had so many red ones?

A. No. Oh, no, no. I had them in beige; I had them in blue; I had them in black. I never even thought about what color. I do know I have blue. I know I had a few blues.

Q. Blue is quite common, isn't it?

A. Why do you—no. On the contrary. It depends on the supplier of the store you are going to.

Q. Most of them have "Coin Wallet" written on them, don't they?

A. On the contrary, I have one in my pocket that doesn't have "Coin Wallet" written on it.

Q. What color is that one?

A. It may be black or blue. I don't know. Either black or blue.

Q. Red is a little unusual?

A. No. Oh, no. Depends on where you—what lo—depends on what locale you are at.

Mr. Enright: Your witness.

Mr. Monroe: Thank you.

Redirect-examination.

By Mr. Monroe:

Q. Mr. Chimel, you testified to a conversation that you had with Mr. Parsons. Is there any [Tr. 529] reason why you told Mr. Parsons what you did tell him?

A. There was a real definite reason why I told him.

Q. What is that reason?

A. Just prior, before I went to see Mr. Parsons Mr. Del Coma, they picked me up, took me down to the police station.

Q. They picked you up, you say?

A. Well, he pulled me over to the curb.

Q. Well, let's go back to that then, if we may. How long was this before you talked to Mr. Parsons?

A. I can't really say. Two or three weeks, maybe. Maybe a week. I can't really say, but it was afterwards. This I do know.

Q. It was afterward that you talked to Mr. Parsons?

A. Definitely.

Q. What happened when you were picked up?

Mr. Enright: Beyond the scope of the Direct, Your Honor. We went through this before.

Mr. Monroe: I think I have the witness on Direct, Your Honor.

Mr. Enright: Beyond the scope of the Cross. Same rules apply.

The Court: Well, overruled.

By Mr. Monroe:

Q. What happened?

A. I was getting out of work and I was coming down, street's called Chestnut, going into Main. All of a sudden [Tr. 530] I seen a motorcycle cop, some officer started speeding around the corner and I says, "Oh, some poor" —excuse—"some poor fellow going to get a ticket."

So before I know it he is more or less guiding me towards the curb, and the squad car came alongside me with his lights on and forced me over to the curb. He was going like this, as I could see through my rearview mirror (indicating). So naturally I pulled over.

So when I pulled over he says. "Stand straight and look towards me." I did just that. Then when that took place then somebody had a revolver out. This I do know. I don't know whether it was a detective or whether it was the officers; they had a revolver out. I could see it. Then Mr. Del Coma——

Q. Where were you standing at this time? Were you standing in the street or on the sidewalk?

A. I was standing on the sidewalk.

Q. What time of day was this?

A. This is right after I got off work, maybe quarter after five.

Q. All right. What happened then?

A. And then Mr. Del Coma came up to me and he says, showed me his identification, says, "I am a police officer; I want to question you." And I says—I don't know how I worded it—I says, "On what?" And he says, "About the Slocum deal." And somehow or another I say to him, "Does it [Tr. 531] have to be now? Can we go home and I will ask my—tell my wife," or something? He says, "No. You can call her from the office." So I went with him, and he took me in his car.

Q. You were transported in his car?

A. Oh, yeah.

Q. Were you in the front or were you in the back?

A. No; they put me in the back, and there was Mr. Del Coma and his partner, he said.

Q. Somebody else driving?

A. No. I believe Del—I don't remember whether Del Coma was driving or the other detective.

Q. Was there a screen on this car which separated you from the driver's compartment?

A. I don't really think so.

Q. What happened when you got to the Orange Police Station?

A. When I got down there they started asking me a bunch of various questions. I mean, you know, and I just answered them. I say to him, "How long is this going to take?" And he says, "That's none of your concern, only until we are finished."

So one thing led to another and well—I don't know what else to say.

Q. All right. How long were you there?

O. Oh, I don't think it was any more than, say, 45 [Tr. 532] minutes at the maximum, I don't think.

Q. What happened then? Were you returned to your car?

A. No. I guess I was delayed, and I had to call my wife, and then he took me down to my car, Mr. Del Coma did, later. You know, come to think of it, I think it might have been more than 45 minutes. Could have been a little over an hour really, because there was more time elapsed than that, I guess.

Q. Then I think you stated that this incident had some relationship to the statements you made to Mr. Parsons?

A. That's right.

Q. What was this relationship?

A. Well, here's this guy's picking me up, and I said to myself, "Well now, these guys don't—do these guys really think I pulled that job or something?" So then I went to see Jack, and he is a close friend of mine and he knows me well, so I said, "Well, I am going to see if Jack believes me," and more of a test, you see. I figured if Jack believes me, and he is a friend of mine, why, naturally an officer or a stranger's going to believe the story. It's getting a little out of focus, you see.

So I told Jack, and then I got to telling him, "Hey, you know that money from Slocum's place?" I says, "I got a hold of some of that money," I said to him. I don't exactly know the nature of the conversation exactly right to [Tr. 533] the detail, and he didn't believe me at first. And I said "Well, I will push a little harder." And all of a sudden he started believing me. And then when he started to

believe me I got pretty angry then, because I figured, well, this guy here, a friend, he believes this, and I figured, forget it.

So there wasn't middle conversation. We just more or less, I says, "Well, let's go." And that's about what happened, and we left. (sic)

Q. Now, there's been testimony given as to three or four typewriters. Were these your typewriters?

A. No, they were not.

Q. To whom did they belong?

A. They belonged to Chuck Hamburger.

Q. How did they get to your house?

A. Well, he had me hold them for—well, he had me hold them for him. He says he couldn't very well have them because the guy he's got them from, he may want them back, and after if he sees them, he will take them back. This way, if he don't know where they are, fine. I says, "No problem; no problem."

Q. Did Mr. Hamburger finally get the typewriters back?

A. Well, that is a little—I can't really say if he did or not.

Q. Why is that?

A. I don't know if he actually got them into his hands [Tr. 534] or not.

Q. Well, did he remove them from your home?

A. Well, yeah, that's about what it amounted to, right. Let me clear that a little closer. When you say—you asked me if he removed them from my home?

Q. Yes.

A. Well, that's why I say, not quite. I gave them back to him, and he wanted them back, but when I gave it back to him he wasn't there when I gave it back to him. He was supposed to have been there, but he wasn't there, so I left it right by his house, by his garage, so I don't know if he really got them or not, I don't know.

He tells me he did anyway.

Q. What kind of a car does Mr. Slocum drive now?

Mr. Enright: Immaterial, Your Honor.

The Witness: He drives a brand new Cadillac, '65.

Mr. Monroe: I have no further questions.

The Court: Mr. Enright?

Recross-examination.

By Mr. Enright:

Q. Now, Mr. Chimel, you went down to Mr. Parsons after the burglary and you told him that you pulled the BR's job; is that right?

A. Not after the burglary, no. After I was questioned by the police.

Q. Which was after the burglary, wasn't it?

[Tr. 535] A. I wanted to clarify it the way you said it, the way it sounded right from there to there, you know.

Q. Oh. Well, some time after the burglary you did go down and tell Mr. Parsons that you pulled BR's job; is that right?

A. About that contents, right.

Q. And did you tell him that you were going to jail, and that your wife may be in selling some coin items?

A. No, I didn't say I was going to jail. No, sir, I didn't say that at all.

Q. You didn't say that?

A. No, I did not. I said, "Who knows, I may even probably go to jail on this thing."

Q. Oh. And you mentioned about your wife coming in to sell some coin items?

A. Yes, I mentioned that. Yes, I mentioned that. Oh, yes.

Q. And you mentioned that—do you recall his saying to you, "Why don't you give back the coins to Mr. Slocum?"?

A. Now, I don't recall exactly that, no.

Q. And you don't recall anything being tied in with the typewriters?

A. I know it sounds like I am saying no, no to a lot of things. I don't recall that, no.

Q. You didn't tell Mr. Parsons about this mystery or unknown man who called you on the phone the day before the [Tr. 536] burglary and the morning after the burglary? You didn't tell him about that?

A. No; it never entered my mind.

Q. Never entered your mind?

A. No, never—because, first of all, the guy started to—now, if he would have—I am pretty sure I probably would have told him, if he would have—didn't start believing me, in the first place, see, so it sort of aggravated me.

Q. Now, you have been in the Pulati's house, have you not?

A. Oh, yes.

Q. And prior to their burglary you were in the house?

A. Oh, yes.

Q. And you were visiting pretty regularly, were you not?

A. I would say so, yes.

Q. But you didn't visit them after the burglary?

A. I certainly did visit them after the burglary.

Q. On a regular basis?

A. A few times I went there later, yes. I mean, you can see there is sort of a—how shall I say it?—indifference between us. Naturally someone thinks you robbed their place, they are less reluctant to talk to you, naturally. So what I want to do? press myself on to them? But I have went to their house on several occasions after the robbery, [Tr. 537] yes, sir.

Q. Prior to the burglary you knew that they kept their coins in the house, did you not?

A. Yes I did.

Mr. Enright: Nothing further.

Redirect examination.

By Mr. Monroe:

Q. Mr. Chimel, you knew before the burglary of Mr. and Mrs. Pulati's house that they had a substantial number of coins, as distinguished from medals and tokens, did you not?

A. Substantial?

Q. A good number of coins, as distinguished from medals and tokens?

A. Yes.

Mr. Monroe: No further questions.

Mr. Enright: Nothing further.

The Court: All right. You may step down. Thank you.

Mr. Monroe: Your Honor, may we confer at the Bench with Your Honor?

The Court: Well, it is about that time. We will take our afternoon recess at this time.

Please be back by not later than three o'clock.

(Recess taken.)

(The following proceedings were had in the Judge's Chambers outside the hearing of the Jury.)

The Court: All right, make your motion.

[Tr. 538] Mr. Enright: Your Honor, at this point, assuming for the moment that we are at the point of both parties resting, if not—well, I will make it at this point anyway, out of the presence of the Jury.

The People are satisfied to allow the evidence to go to both Counts I and III, and we are making an election. As the Court knows, Count I and II are related: I being a burglary, and II is a receiving of stolen property from Count I. At this time the People are making an election and moving to dismiss Count II, the receiving, and we will not be submitting verdicts as to Count II.

The Court: Will you get the file off the Bench, Mr. Clerk?

The Clerk: Yes, Your Honor.

Mr. Enright: It is my understanding that the Defendant, if he is convicted of both Counts I and II could only be sentenced on one of the Counts anyway.

The Court: Now, so the record may be clear, Count II of the Information, which reads: "Count II: And the said Ted Steven Chimel is hereby further accused by the District Attorney of the County of Orange by this second Count of this information, a felony: to wit, Violation of Section 496 of the Penal Code of the State of California (receiving stolen property) in that on or about the 14th day of September, 1965, in the County of Orange, State of California, the said Ted Steven Chimel did wilfully and unlawfully and feloniously [Tr. 539] conceal and withhold from the owner certain property: to wit, coins and medals which had been stolen, knowing the same to have been stolen."

Now, Mr. Enright, is that the Count which you propose to dismiss?

Mr. Enright: Yes, Your Honor.

The Court: Let me alter my question: Which you now move to dismiss?

Mr. Enright: Yes, Your Honor.

The Court: Mr. Monroe?

Mr. Monroe: Well, Your Honor, I would like to add these

comments and a motion to go with the District Attorney's motion, as soon as it's ruled upon:

I think that this action here is about as conclusive evidence as can be had that the District Attorney was proceeding in an improper manner at the beginning of this case in proceeding with Count II.

I suggest to Your Honor that the evidence has shown to this Court that the District Attorney knew that he didn't have evidence to support Count II from the beginning. I I feel that this procedure has deprived the Defendant of a fair trial; it has exposed him to the prejudice before the Jury of a Count which was unfounded, and, of course, at this juncture it would not serve his interest to oppose the motion, but I do feel that his interests have been severely prejudiced by the procedure adopted by the Prosecution.

[Tr. 540] Mr. Enright: May I reply to that, Your Honor?

The Court: Yes.

Mr. Enright: People would like to indicate that we feel that the evidence that has been produced in this trial goes to both Counts I and II; that is, the evidence of the stolen property of the Pulati's. We feel that sooner or later there must be an election by either the Court in sentencing, or the People. We feel there is ample evidence of a receiving stolen property, but in view of the more serious charge of burglary, at this time we are moving to dismiss so that the Jury has before it just two Counts of Burglary.

The Court: All right. People's motion will be granted.

Mr. Monroe: At this time, Your Honor, I would like to move for a mistrial, based on the grounds set forth to Your Honor in response to the District Attorney's motion just granted.

The Court: Motion will be denied.

Mr. Monroe: Oh, yes, one other matter, Your Honor: I do have a witness under Subpena from Mr. Enright's office, and I will offer to prove by this witness that the District Attorney, while in possession of all the facts which were in the possession of Officer Del Coma at the time he made the first arrest in this case, declined to prosecute, which will further show that in possession of further facts, specifically on August 30, 1965, the District Attorney declined to [Tr. 541] prosecute, all of which evidence I believe goes toward

the question of probable cause for any search, arrest or seizure, which I believe is before the Court.

Mr. Enright: Well, Your Honor, in view of counsel's Offer of Proof, which I don't believe the proof would show at all, I wouldn't want the Offer of Proof to stay without being challenged.

I don't believe that the Deputy who was handling the Complaint would testify anywhere near what Mr. Monroe has indicated.

The Court: Off the record.

(Off the record discussion.)

The Court: I personally think Mr. Monroe's Offer of Proof should be denied.

What have you to say about that, Mr. Enright?

Mr. Enright: Well, Your Honor, with the trend of the courts and the uncertainty of the law that the police officers are faced with, I wouldn't want the Appellate Court to be viewing his Offer of Proof in an abstract as absolute testimony, because we don't believe the testimony would indicate that.

We believe, as this Court knows, the procedure of getting a Complaint is to go to the DA's office with facts that I believe are before this very Trial Court, and those facts were before Mr. Law when the Complaint was issued and the Warrant was gotten and signed. And, of course, I believe [Tr. 542] the issue of probable cause is always there, whether the Warrant—if the Warrant—if there is a defect on the face of the Warrant, or if an Appellate Court decides they don't like the procedure that's been in vogue in California for the last 20 years or so.

I feel, if there is any question about the procedure, that we might clear it up by having Mr. Law testify as to his remembrance of the facts that he had at the time that the Complaint was issued.

Mr. Monroe. In response, Your Honor, and Mr. Enright: I feel that I am on the horns of a dilemma here, because I have previously adopted the position that the issue of probable cause is not properly before the Court due to the fact that with the issuance of Warrants the earlier, better opportunities for pursuing the issue of probable cause were foreclosed to the Defendant, thus I have taken the position that

the issue of probable cause must turn or fall on the legality of the Warrants as issued.

However, I am concerned here in making this Offer of Proof with a position which I think is diametrically opposed to the basic position which I have just stated, namely, that, if indeed the Appellate Court should determine that the issue of probable cause is before the Court, then I am almost obligated to make some offer.

The Court. All right. Now, you gentlemen, unless you gentlemen stipulate otherwise, the ruling will be that Mr. [Tr. 543] Monroe's Offer of Proof will be refused.

Mr. Enright: Can we go off the record for a moment, Your Honor?

The Court: Yes.

(Off the record discussion.)

The Court: On the record: At the request—. On stipulation of counsel Court will reverse it's ruling.

Mr. Monroe: No stipulation, Your Honor.

The Court: Well, you have offered it.

Mr. Monroe: That's correct, but I do not agree with Mr. Enright's position just taken. I think Miranda versus Arizona is ——

The Court: Well, what do you want to do? Do you want to put Law on and examine him or not?

Mr. Monroe: Certainly.

The Court: All right. Then I will reverse my ruling, and you may call Mr. Law to the stand at this time.

Mr. Enright: This will be out of the presence of the Jury, though. I don't believe this is a Jury question at this point.

Mr. Monroe: No; this is a Court question.

The Court: Now, while we are here how about these two, these, want those introduced? (Indicating.)

Mr. Enright: Off the record.

(Off the record discussion).

(The following proceedings were had in open court, [Tr. 544] outside the hearing of the Jury.)

The Court: Gentlemen, I am going to ask that everybody but the Defendant, the attorneys and the court personnel leave the room. Will you station yourself at the door, and

see that no one enters? The air is so bad in chambers with your cigars that I think we will come out here in self protection.

Mr. Enright: Yes, Your Honor.

I haven't run down to get Mr. Law, but he knows—he's asked me each day what he is to do with the Subpena that Mr. Monroe served on him.

The Court: All right, bring him up then.

Mr. Enright. All right.

The Court: Mr. Law, will you be sworn?

ROBERT E. LAW, produced as a witness on behalf of the Defendant, and being first duly sworn, was examined and testified as follows:

The Court: Let the record show that the courtroom has been cleared of all persons except the Defendant, and court personnel, including Defendant's attorney, and Mr. Law has been called and sworn. Also that Mr. Law is a Deputy District Attorney—still are, aren't you?

The Witness: Yes.

The Court: Of the County of Orange, and was, has been for at least two years.

[Tr. 545] Direct-examination

By Mr. Monroe:

Q. Mr. Law, I think you have before you Mr. Enright's file on this case, People versus Chimel; is that correct?

A. That's correct.

Q. And was this case originally assigned to you for consideration and evaluation?

A. In a manner of speaking it was, yes.

Q. When was that, Mr. Law?

A. It would have been between the times of August 14, 1965, and September 13, 1965.

Q. Did Officer Del Coma submit a report to you dated August 17, 1965, regarding burglary of the Money Vault?

A. He did submit a report. I am not certain of the date. May I check?

Q. Certainly.

A. I am not certain of the date he submitted a report. He submitted a number of reports following the 14th of August.

Q. Well, perhaps we can go by the dates with which the reports—with Mr. Enright's permission—the dates which the reports themselves bear, if that would be of help?

A. That's fine.

I have in my hand a report dated August 15, 1965, which is familiar to me, in that the first sheet is the normal sheet of the opening sheet of an Orange Police Department [Tr. 546] Crime Report, and my recollection is that this is the first report submitted to me for official consideration.

Q. All right. And how many pages is that report, Mr. Law? Is that a two-page report?

A. This particular report is a two-page report, but attached to it is another six-page report, and then another four-page report, and a couple more reports, but the top report is two pages.

Q. Now, the six-page report, what date does it bear, Mr. Law?

A. August 17, 1965.

Q. And the four-page report following, what date does it bear?

A. Same date, August 17, 19—excuse me. That next report is seven pages. There's something written on the seventh page.

Report following that is August 19, 1965. That's a four-page report. Then there's another report, August 24, 1965, four pages. Then an August 30, 1965, which is 13 pages.

Q. What are these reports submitted to you for, Mr. Law?

A. Well, basically to determine from the facts stated in the reports and the investigation of the police whether or not a Complaint should be issued by the District Attorney's office, charging the Defendant with a crime.

[Tr. 547] Q. I see. Now, during this period of time which is covered by the reports, August 15 to August 30, can you recall, or can you tell from the reports how many times, if any, you discussed this case with Officer Del Coma?

A. I could only guess. The reports are not of any assistance, because I remember getting a number of them at one time.

However, I did talk to Officer Del Coma on several occasions during his investigation of the burglary of the Money Vault.

Q. All right. Now, I invite you to examine page 12 of the report bearing date August 30, 1965, and with particular reference to the first paragraph of that report.

A. Yes, I have read that first paragraph.

Q. Now, having read the first paragraph of that report, are you aided in recalling? Can you recall if the reports bearing dates previous to and including August 30, 1965 were before you at that time?

A. I had read a number of reports prior to that time. I am not certain that during the conversation mentioned in the first paragraph on page 12 of this report of August 30 whether or not I had the reports in front of me.

Do you understand what I mean?

Q. Well, where that report, page one of August 30, where that one indicates that Officer Del Coma contacted you and explained the situation to you, from your own recollection, [Tr. 548] do you recall this to be the fact: that he explained the case to you as he understood it; would this be a fair interpretation?

A. I am certain, if I might add, that at the time he called me I knew the facts of the case. In other words, I had already been presented with some reports. I think he had just brought me up to date on some conversation which was to occur prior to August 30, and having related those facts, and that's the best of my recollection.

Q. Fine. And at that time on August 30 you declined to issue a Complaint on this case, did you not?

A. I could tell you in a minute, if I could look out the date I made out the face sheet for the Complaint.

My recollection is that as of that date I was not satisfied. That's just to the best of my recollection. I have no notes to indicate my evaluation of the facts at that time.

Q. Now, my next question is going to be a taxing one to your memory, and I know that it can't be perfect, but as nearly as you can recall, did you not on August 30, know that there had been an apparently burglarious entry in the Money Vault; there had been a burglary of the Pulati home; that Mr. Chimel had stated on August 14 to a friend that he was going to pull a job of a coin shop; that Mr. Chimel stated on August 15 to that same friend that he had at-

tempted to enter a coin shop, and that he made a further statement on [Tr. 549] August 28 to another person that he had pulled the BR job?

Were all of those facts within your knowledge at that time?

A. No.

Q. I realize the difficulty of this question.

A. If I may in my own words explain the procedure?

Q. Certainly.

A. My knowledge of the—now, my recollection is that I was not aware of the Pulati job at the time of August 30. Now, I am not sure. I remember talking to Detective—I think it was Gallmeister from Santa Ana, at one time or another about it. I believe it was after I issued the first Complaint.

Q. I see. Well, then, with the exception of——

A. There is one more exception.

Q. Yes.

A. And that is that I didn't—that we had no firm statement that Mr. Chimel had stated that he had pulled the BR's job, or something to that effect. I think it was to Mr. Ambrose that he made that statement. No, excuse me, it was to Douglas Parsons that he made the statement, to my recollection: "I pulled the BR job", and as of August 30 there was information that such a witness was available; but my recollection is that I did not know it.

In other words, I hadn't been given what I felt was reliable information. No one had talked to that witness. We [Tr. 550] were trying to locate him.

Q. Once again, appreciating the difficulty of the time involved, can you recall whether at that time you were aware of any suspicion connected with the Pulati burglary?

A. I'm sorry. I can't remember. You want me to go through the reports and see if there is any mention of it? That's all I can do.

Q. That one is a pretty short report. If you would, it might be helpful.

A. This report? (Indicating.)

Q. Yes.

A. I was referring to the Crime Report of Santa Ana Police Department that is dated the third of February, 1965.

To the best of my recollection, I was not aware of the

report on the Pulati job—as I recall, and this is just—this is a year-old recollection—that after Mr. Chimel was arrested for the job at the Money Vault, I believe there was a search at the time he was arrested—now, I'm not sure—I think it was at that time items were discovered that came from the Pulati house, and I think that is how the two came together.

That's my recollection of a year.

Q. All right. From what you have said, Mr. Law, —. Let me ask you this: Commencing from August 30 did you thereafter authorize the issuance of a Complaint?

A. I did, yes.

[Tr. 551] Q. And when did you make that authorization?

A. It was on or about the 13th day of September.

Q. I see.

Now, what did you learn from August 30 to September 13 which influenced you to authorize the issuance of a Complaint on that date?

A. The statement that Mr. Chimel made to Douglas Parsons to the effect that the Defendant told him that he had pulled the Slocum job or BR's job, and I say that because prior to that time I had begun preparation of a form we use as a direction for a Complaint, and I had listed three witnesses, and then I added this fourth witness.

At an earlier time I felt that there may be enough, but I wanted that witness talked to, and when they returned with the information of the statements made by Mr. Chimel to Mr. Parsons I filled in the rest of the report, the rest of the witnesses that are normally used for Prelim, and then I initialed the direction.

Q. As far as you know, is the statement of Douglas Parsons the only additional information then that came to you, sir?

A. There was some other conversations between Mr. Chimel and Mr. Del Coma regarding coins, and they are lengthy, and there was a lot of discussion by telephone, and in person, as I recall, and I had that information too, that transpired from the 30th on, or the 29th on, or something like that.

[Tr. 552] Mr. Monroe: Fine. I have no further questions.

However, I think it appropriate to say at this time that I regret ever having to ask a witness to serve as a witness. (sic)

Cross-examination.

By Mr. Enright:

Q. Mr. Law, were you also aware of certain statements that Mr. Chimel had made to Officer Del Coma regarding the possibility of returning coins in this burglary, Slocum burglary?

A. There was a lot of discussion on this. I knew at the time, and both before and after the date of the 30th, but prior to the issuing of the Complaint there was a lot of conversation between Chimel and Del Coma on the return of coins. I'd have to refresh my recollection to the report as to what statements I had available at the time.

Q. Well, do you recall specifically a statement from Mr. Hamburger to Mr. Del Coma that Chimel was not going to return his coins?

A. Yes, that statement was made to me, yes.

Redirect examination.

By Mr. Monroe:

Q. At that time, Mr. Hamburger was under suspicion as one or more—or one of the burglars of the Money Vault, was he not?

A. Well, both Mr. Hamburger and Mr. Chimel appeared to negotiate the return of coins, or one of them did, stating that the other one had the other half of the coins.

[Tr. 553] Q. I see.

A. So there were two possible suspects.

Q. I see.

Mr. Monroe: No further questions.

Mr. Enright: Nothing further.

The Court: All right, gentlemen, where are we? You may step down, Mr. Law.

Mr. Enright: May Mr. Law be excused?

Mr. Monroe: Yes, Mr. Law may be excused.

The Court: Well, gentlemen, where are we?

Mr. Monroe: Defendant rests at this time.

The Court: You called and you examined Mr. Law. Now, do you withdraw your Offer of Proof to have his testimony submitted to the Jury?

Mr. Monroe: I am sorry, Your Honor. I don't—I didn't intend to, and I may have mis——

The Court: It is not a matter for the Jury.

Mr. Monroe: No, no, I don't think so, Your Honor.

The Court: All right.

Mr. Monroe: The Offer of Proof was directed solely to Your Honor.

Mr. Enright: So, are you resting now?

Mr. Monroe: Yes.

Mr. Enright: We don't have any rebuttal testimony, Your Honor.

The Court: All right. Then the next step is argument. [Tr. 554] Now, how would you like to do this, gentlemen? How would you like to, for Mr. Enright to present his opening argument? I assume he is not going to talk until 4:30, although I might be wrong.

Then let Mr. Monroe argue until 4:30, and then let Mr. Monroe finish his argument tomorrow, and be rather liberal with Mr. Enright in his rebuttal argument. In that way we can use up this hour. I can instruct the Jury, and possibly we can get another jury case on the way tomorrow morning.

Would that be agreeable, gentlemen?

Mr. Monroe: I don't know what Your Honor's——

The Court: I think that's the way we are going to do it anyhow, so bring in the Jury.

I hate to be arbitrary, but after all, I was talking to Judge Murray at noon, and they do have a—several judges on vacation.

Mr. Monroe: What I was going to suggest, Your Honor: It might be that I could wind up my argument today. I don't know. It might be ten, 15 minutes.

The Court: Well, we hope so. All right.

Mr. Monroe: I'd much rather wind it up than to get it separated.

The Court: All right. If necessary, we will take a little more time.

(Jury returns.)

The Court: I will make this brief statement to the Jury: [Tr. 555] That while you have been gone several technical motions have been presented in the case.

Mr. Monroe?

Mr. Monroe: Your Honor.

The Court: For the record, do you rest at this time?

Mr. Monroe: Oh, yes, I am sorry. Defendant rests.
The Court: Any rebuttal?
Mr. Enright: No rebuttal, Your Honor.
The Court: No rebuttal. In other words, the evidence in the case is complete.

Opening argument for the People.

(Opening argument by the Prosecution.)
(Opening argument by the Defense.)
(Recess.)

[Tr. 556] Santa Ana, California—Wednesday, July 13, 1966

(James G. Enright, Assistant District Attorney, appeared as counsel for the People.)

(Keith C. Monroe, Attorney at Law, appeared as counsel for the Defendant.)

(David D. French, Judge Presiding.)

(William R. Macauley, C.S.R., Official Court Reporter.)

(The following proceedings were had in the Judge's chamber outside the hearing of the Jury.)

The Court: Go ahead, make your record.

Mr. Enright: I believe at this point, Your Honor, in discussing the Jury instructions, the People have submitted the instruction that is covered by the Dorado decision in Caljic. I believe that is 29-B new.

Mr. Monroe: Yes.

Mr. Enright: And we have also made up out of the language of Miranda decision, Miranda versus Arizona, Supreme Court of the U.S.

The Court: Case Number 758, October Term, 1965, dated 6-13-66.

Mr. Enright: We made an instruction up from the language of Miranda. Counsel for the Defendant is here and it is his impression that in the state of our evidence that neither the Dorado instruction nor the Miranda instruction is applicable; is that correct?

[Tr. 557] Mr. Monroe: That is correct, Mr. Enright.

The Court: All right. Then it is stipulated the Court will not instruct either under Dorado or Miranda.

Mr. Enright: Is this correct: that in view of the fact that the Defendant was not in custody and was not subject to interrogation, no evidence came in of any interrogation questions or custody situation that would be covered by Miranda or Dorado?

Mr. Monroe: That's correct, the evidence does not show any admissions during custody.

The Court: All right.

Mr. Monroe: The only other thing remaining are the certified copies of Municipal Court's Complaints Numbers 91401 and 91516, together with the Warrants which were issued thereon, I believe it's been agreed that those certified docu-

ments can come into evidence as exhibits, it being understood that they are not to go to the Jury.

Mr. Enright: Yes. I don't know whether technically they are supposed to be called—supposed to be just called evidence and not exhibits.

But anyway, the understanding and stipulation between counsel and myself is that they are to come into the case, but are not to be shown to the Jury, as they are not part of the Jury deliberations.

Mr. Monroe: In any event, they will be part of the record. [Tr. 558] Mr. Enright: Right.

The Court: All right. Let the record show that the Court is a little uncertain as to exactly what status should be given the documents, but the Court will order them introduced in evidence as Defendant's next in order, but with the understanding between counsel, who are both present, that said documents will not be exhibited to the Jury?

Mr. Monroe: That is correct, Your Honor.

Mr. Enright: Right.

Mr. Monroe: It is also my understanding that—I think it is, anyhow—that the Court will take judicial notice that it is customary in the Municipal Court, and as far as the Court can recall, was done in this case, that the Warrant is issued on the basis of the Complaint alone?

The Court: Yes. All right.

Now, gentlemen, I am going to permit Mr. Monroe to reopen for that limited purpose, going to give —. Do you want five minutes more to argue this morning?

Mr. Monroe: I would like it, Your Honor.

The Court: All right. And I am going to time you on it because it's sort of an act of courtesy.

Mr. Monroe: It is, and I appreciate it.

The Court: Now, I am going to reassemble these instructions while you are arguing, and then we will come in here and have a quick conference before I instruct the Jury, to be sure that we have them in the order and the ones that [Tr. 559] you want.

Mr. Enright: Yes, Your Honor.

The Court: All right, let's go.

The Court: People versus Chimel. Will counsel stipulate the Members of the Jury are all present and in the box?

Mr. Enright: So stipulated, Your Honor.

Mr. Monroe: So stipulated, Your Honor.

The Court: Well, we are not very much late, but——. Proceed.

Mr. Monroe: Mr. Chimel, take the stand, please?

The Court: Mr. Monroe made a motion in chambers which the Court granted, that he be permitted to recall Mr. Chimel for, he said, two or three questions.

TED STEVEN CHIMEL, produced as a witness in his own behalf, having previously been duly sworn, was recalled and testified further as follows:

Redirect examination.

By Mr. Monroe:

Q. You are still under oath, Mr. Chimel.

With respect to the red coin purse which was introduced into evidence as People's 12-B, Mr. Chimel, have you had opportunity to consider between yesterday and today this red coin purse?

A. Yes, I have.

[Tr. 560] Q. And what have you discovered about it, sir?

A. I finally recalled where I purchased it at.

Q. That is, this red coin purse, 12-B? (Indicating.)

A. Yes.

Q. Where did you purchase it?

A. At Davis' Coin Shop.

Q. All right. And what, if anything, did you do in that connection last night?

A. I went down to Davis' Coin Shop and asked him about it. He says, "I used to sell red ones." I says, "I remember particularly buying one from you." And he said, "I haven't seen one in about six months." So he says, "Yes, I do know who sells them. Only one supplier, but I don't think he is in the business." So he sent me down to his house, and sure enough, he was supplying him with them all the time.

Q. And did you in fact purchase a red coin wallet last night?

A. Yes, I did.

Q. Do you have that with you?
A. Yes, I do.
Q. Will you produce it, please?
A. (Witness indicated.)

Mr. Monroe: May this be marked For Identification, Your Honor?

The Court: All right. Defendant's For Identification next in order.

[Tr. 561] Mr. Monroe: This is now marked Defendant's 14, Mr. Chimel. I notice that there are some paper coin containers in here. These were not contained in the wallet when you purchased it, were they?

A. No, they weren't.

Mr. Monroe: I would offer this in evidence at this time, Your Honor.

The Court: It will be received.

Mr. Enright: No objection.

Mr. Monroe: No further questions.

The Court: Any questions, Mr. Enright?

Mr. Enright: No questions, Your Honor.

The Court: All right. You may step down.

Now, the Court has as a courtesy to Mr. Monroe, in view of the fact that he had one witness, to argue five minutes this morning on his case. I do that frequently where one attorney completes his argument in the afternoon and then the case—argument resumes the next morning.

All right, Mr. Monroe. It is quarter after nine, and I will stop you at 20 after nine.

Mr. Monroe: All right. Thank you, Your Honor.

(Opening argument for the Defense continued.)

(Closing argument for the Prosecution.)

(Recess taken.)

The Court: Stipulate the Members of the Jury are all present and in the box?

[Tr. 562] Mr. Monroe: So stipulated, Your Honor.

Mr. Enright: So stipulated, Your Honor.

(Jury instructed.)

(Verdict given.)

IN THE COURT OF APPEAL, FOURTH DISTRICT, SECOND DIVISION, STATE OF CALIFORNIA

4 Cr. 2722

PEOPLE OF THE STATE OF CALIFORINA, Plaintiff and Respondent,

vs.

TED STEVEN CHIMEL, Defendant and Appellant.

OPINION—Filed August 30, 1967

Appeal from a judgment of conviction entered in the Superior Court in and for the County of Orange. Judge David D. French. Affirmed.

Keith C. Monroe for Defendant and Appellant.

Thomas C. Lynch, Attorney General, William E. James, Assistant Attorney General, and Ronald M. George, Deputy Attorney General, for Plaintiff and Respondent.

We conclude that though it was error to have charged in the information a violation of section 496 of the Penal Code because the magistrate, at the preliminary hearing, determined there was no evidence to bind defendant over to the Superior Court, such error was not prejudicial; although there was lack of probable cause to issue the warrant of arrest solely upon the allegations of the formal criminal complaint, the good faith attempt of the arresting officer to attempt to obtain a warrant of arrest, in combination with the personal knowledge of the arresting officer at the time of arrest, constituted probable cause for the arrest.

The defendant was accused by a complaint filed on September 13, 1965, in the Municipal Court of the Santa Ana-Orange Judicial District with the commission of a burglary in violation of section 459, Penal Code.[1] Upon presenta-

[1] The verified complaint signed by Officer Del Coma on September 13, 1965, provided:

"Personally appeared before me this 13th day of September, 1965 T. Del Coma who, being first duly sworn, deposes and says:

"That on or about the 14th day of August, 1965, at

tion of the complaint to the judge of that court, a warrant of arrest was issued on September 13, 1965. Defendant was subsequently arrested at his home in the City of Santa Ana pursuant to the warrant in the late afternoon of that day. The arresting officer, one T. Del Coma of the City of Orange Police Department, at the time of the arrest of the defendant in his home, conducted a search of that residence and discovered a quantity of coins and other nuimismatic paraphernalia which he believed to be connected with the burglary for which the defendant was arrested and which he therefore seized. At the time of the arrest on September 13, Officer Del Coma was accompanied by police officers of the Santa Ana Police Department.

Later, and on September 16, 1965, a second criminal complaint was filed in the same court by a different officer which charged the defendant with the commission of two separate and independent offenses.[2] The defendant, who after the

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and within Orange County, California, the crime of Felony, to-wit: Violation of Section 459 of the Penal Code was committed by Ted Steven Chimel who at the time and place last aforesaid, did then and there willfully, feloniously and burglariously enter a building known as The Money Vault, located at 153 North Glassell Street, Orange, in said County and State, with intent to commit theft.

"All of which is contrary to the form, force and effect of the Statute in such cases made and provided and against the peace and dignity of the people of the State of California.

"Wherefore, said complainant prays that a warrant may be issued for the arrest of the said Ted Steven Chimel and that he be dealt with according to law."

[2] The verified complaint signed by one F. D. Gallmeister on September 16, 1965, alleged in a similar manner:

"Personally appeared before me this 16th day of September, 1965 F. D. Gallmeister who, being first duly sworn, deposes and says:

"Count I: That on or about the 2nd day of February, 1965, at and within Orange County, California, the crime of Felony, to-wit: Violation of Section 459 of the Penal Code was committed by Ted Steven Chimel who

first arrest had been admitted to bail, was arrested by officers from the Santa Ana Police Department in the late afternoon of September 16, 1965, pursuant to a warrant of arrest issued on the second complaint. A search of the residence, incident to the second arrest ensued, during which additional coins and other items were seized.

After a preliminary hearing on October 14, 1965, before the judge of the Municipal Court, defendant was held to answer on the counts contained in the complaints charging the respective burglary offenses, but he was not held to answer to the count charging the buying and receiving of stolen property since in the opinion of the judge ". . . at the present time, there is no evidence sufficient to hold the defendant to answer on count two." This determination on the preliminary hearing was orally accepted by the district attorney's office.

On October 29, 1965, the district attorney filed a three count information, two counts of which charged the respective burglaries for which the defendant had been held to answer and the remaining count charged the defendant

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at the time and place last aforesaid, did then and there willfully, unlawfully, feloniously and burglariously enter a house in the possession of and under the control of Vito L. Pulati, located at 1303 South Flower Street, Santa Ana, in said County and State, with intent to commit theft.

"Count II: That on or about the 2nd day of February, 1965, at and within Orange County, California, the crime of Felony, to-wit: Violation of section 496 of the Penal Code was committed by Ted Steven Chimel who at the time and place last aforesaid did then and there willfully, unlawfully and feloniously buy and receive certain property, to-wit: coins, which had been stolen, knowing the same to have been stolen and did conceal and withhold such property from the owner.

"All of which is contrary to the form, force and effect of the Statute in such cases made and provided and against the peace and dignity of the people of the State of California.

"Wherefore, said complainant prays that a warrant may be issued for the arrest of the said Ted Steven Chimel and that he be dealt with according to law."

with receiving stolen property in violation of section 496 of the Penal Code on February 2, 1965, the offense for which the defendant had not been held to answer at the preliminary hearing.[3] After defendant's motion under section 995 of the Penal Code was denied on November 19, 1965, the

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[3] As originally filed on October 29, 1965, this information charged as herein relevant:

"Count I: The District Attorney of the County of Orange, by this Information, hereby accuses Ted Steven Chimel of a Felony, to-wit: Violation of Section 459 of the Penal Code of the State of California (Burglary), in that on or about the 2nd day of February, 1965, in the County of Orange, State of California, the said Ted Steven Chimel did willfully, unlawfully, feloniously and burglariously enter a house in the possession of and under the control of Vito L. Pulati, located at 1303 South Flower Street, Santa Ana, in said County and State, with intent to commit theft.

"Count II: And the said Ted Steven Chimel is hereby further accused by the District Attorney of the County of Orange, by this second count of this Informaiton, of a Felony, to-wit: Violation of Section 496 of the Penal Code of the State of California (Receiving Stolen Property), in that on or about the 2nd day of February, 1965, in the County of Orange, State of California, the said Ted Steven Chimel did willfully, unlawfully and feloniously conceal and withhold from the owner certain property, to-wit: coins and medals, which had been stolen, knowing the same to have been stolen.

"Count III: And the said Ted Steven Chimel is hereby further accused by the District Attorney of the County of Orange, by this third count of this Information, of a Felony, to-wit: Violation of Section 459 of the Penal Code of the State of California (Burglary), in that on or about the 14th day of August, 1965, in the County of Orange, State of California, the said Ted Steven Chimel did willfully, unlawfully, feloniously and burglariously enter a building known as The Money Vault, located at 153 North Glassell Street, Orange, in said County and State, with intent to commit theft."

". . . ."

district attorney, by written notice of motion, sought to amend Count II of the information set forth below by deleting from that count the date of the "2nd day of February" and inserting in its place the "14th day of September." This motion was granted by the court on January 14, 1966, presumably pursuant to section 1009, Penal Code.

After numerous continuances, the matter finally came to trial on July 5, 1966. The defendant, by his counsel, out of the presence of the jury, initially objected to the jurisdiction of the trial court on the second count of the information. This objection was overruled and the matter proceeded to trial on that date. At the conclusion of the week-long jury trial on July 12, 1966, the district attorney moved out of the presence of the jury to dismiss the second count of the information. Asserting the presentation of this count to the jury constituted prejudicial error, the defendant's counsel moved for a mistrial. After argument on both motions, the court granted the motion to dismiss as to the second count, but denied the defense motion for a mistrial. The jury later returned a verdict of guilty as to each of the remaining counts and judgment was accordingly entered. The appeal follows from the judgment of conviction.

In the absence of a contention by defendant that the evidence is insufficient to sustain the judgment of conviction, we must perforce consider each of the appellant's contentions *en seriatum.*

The appellant objects initially to the jurisdiction of the trial court to entertain charges against him as to Count II which, at the arraignment, the municipal court had specifically refused to bind him over on this charged offense. In this assertion the appellant is correct.

Such an examination, commitment and order of commitment is a prerequisite to the duty of the district attorney to file an information (art. I, § 8, Calif. Const.) against the defendant "which may charge the defendant with either the offense or offenses named in the order of commitment or any offense or offenses shown by the evidence taken before the magistrate to have been committed." (Pen. Code, § 739; see also Pen. Code, § 872.)

Before the affirmative duty of the district attorney arises under the foregoing statutory provisions, the Constitution requires that a person be held to answer in the Superior Court only after a prior determination to that effect by

either a magistrate or grand jury. This requirement of a prior determination acts as a safeguard or bulwark against unwarranted invocations of the untrammeled power and authority of the state against the accused individual by overzealous prosecuting officials.

The Supreme Court noted in *Parks* v. *Superior Court,* 38 Cal. 2d 609, 612: "As to the Palmer transaction the magistrate discharged the petitioner [defendant] on the ground that the evidence showed no public offense had been committed. Such a procedure would be contrary to the protection afforded by the constitutional provision and is not within the permissive powers under the code section. Those powers depend on the issuance of an order of commitment. No exception to this dependence may be made because of the circumstance that the defendant in the same proceeding was charged and heard on two separate, unrelated and unconnected transactions. As indicated in the *Bird* case (*People* v. *Bird,* 212 Cal. 632), the constitutional provision would be nullified if by this device the district attorney might proceed without first having obtained an order of commitment.

> "It follows from the foregoing that in the absence of the required commitment the inclusion in the information of the charge of grand theft based on the Palmer transaction was unwarranted and contrary to the provisions of the Constitution and section 739 of the Penal Code."

The same result follows herein. While there may be no constitutional prohibition to the filing of an information "charging a different but related crime *shown by the evidence taken before the magistrate bearing on the same transaction involved in the commitment order,*" [Emphasis added.] (*People* v. *Downer,* 57 Cal. 2d 800, 810; *Mulkey* v. *Superior Court,* 220 Cal. App. 2d 817, 824; *People* v. *Evans,* 39 Cal. 2d 242, 249), herein there was a complete absence of evidence adduced at the preliminary hearing to bind defendant over to the Superior Court on Count II. At this preliminary hearing evidence was introduced, which most favorably construed in the prosecution's favor, indicates a reasonable possibility the defendant might have been guilty of the Pulati and Money Vault burglaries, but failed to

indicate a violation of section 496, Penal Code [Count II] in the absence of some substantial evidence to indicate defendant "received" the property or if "received", defendant's knowledge that the property was stolen. (See *People* v. *Salazar,* 210 Cal. App. 2d 89; *People* v. *Boyden,* 116 Cal. App. 2d 278; *People* v. *McClain,* 115 Cal. App. 512.) It follows, therefore, that the information as to the second count was invalid. (*People* v. *Kellin,* 209 Cal. App. 2d 574, 576; see also *People* v. *Rosborough,* 178 Cal. App. 2d 156, 166.)

Defendant urges the arrest warrants obtained and served on September 13th and 16th, respectively, were constitutionally invalid. The attorney general "concedes that the two warrants for appellant's arrest were defective under the *Giordenello-Aguilar* test" (sic, *Giordenello* v. *United States,* 357 U.S. 480 [78 S.Ct. 1245, 2 L.Ed. 2d 1503]; *Aguilar* v. *Texas,* 378 U.S. 108 [84 S.Ct. 1509, 12 L.Ed. 2d 723]; see also *Barnes* v. *Texas,* 380 U.S. 253 [85 S.Ct. 942, 13 L.Ed. 2d 818], but instead argues the arrests were justified, independent of the warrants, on the basis of the personal knowledge of the arresting officers amounted to probable cause for the arrest.

Some question exists as to the correctness of the Attorney General's concession that the arrest warrants were invalid. The basis for the *Giordenello-Aguilar-Barnes* rules is contained in the Fourth Amendment to the Federal Constitution to the effect that ". . . . no warrants shall issue, but upón probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

In *Giordenello* v. *United States, supra,* 357 U.S. 480 [78 S.Ct. 1245, 2 L.Ed.2d 1503], the United States Supreme Court considered a similar attack on the validity of a warrant of arrest. The question posed, as in the case at bench, was whether the complaint, upon which the warrant had issued, contained sufficient allegations to enable the magistrate issuing the warrant to make a "neutral and detached" finding of probable cause upon which the warrant might be issued. Mr. Justice Harlan, speaking for the Court, stated:

> "The language of the Fourth Amendment . . . applies to arrest as well as search warrants. [Citations.] The protection afforded by these Rules, when they are

viewed against their constitutional background, is that the inferences from the facts which lead to the complaint '. . . be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.' [Citation] The purpose of the complaint, then, is to enable the appropriate magistrate, here a Commissioner, to determine whether the 'probable cause' required to support a warrant exists

. . . .

"When the complaint in this case is judged with these considerations in mind, it is clear that it does not pass muster because it does not provide any basis for the Commissioner's determination under Rule 4 that probable cause existed. The complaint contains no affirmative allegation that the affiant spoke with personal knowledge of the matters contained therein; it does not indicate any sources for the complainant's belief; and it does not set forth any other sufficient basis upon which a finding of probable cause could be made."

While the rationale for *Giordenello* was not expressly hinged upon the Fourth Amendment, and arguably might have been dependent on the Federal Rules, any doubt in this regard was resolved in the subsequent decision of *Aguilar* v. *Texas, supra,* 378 U.S. 108, 113 f.n. 3.

The *per curiam* decision in *Barnes* v. *Texas, supra,* 380 U.S. 253 [85 S.Ct. 942, 13 L.Ed. 2d 818], compels the conclusion that the warrants of arrest in the case at bench were invalid. In the perior appeal of the matter, *Barnes* v. *State,* 390 S.W.2d 266, the Court of Criminal Appeals of Texas, considered and concluded the following affidavit supporting a warrant of arrest stated sufficient facts to satisfy the requirements of the Fourth and Fourteenth Amendments to the Constitution.

". . . That heretofore, to-wit: on or about the 29th day of May, A.D., 1962, and before the making and filing of this Complaint, in the County of Lubbock and State of Texas, Billy Joe Barnes and Johnny Leach did then and there unlawfully and fraudulently take from the possession of Southwestern Bell Telephone Company herein called 'owner' good and lawful United States

currency of the value of over Fifty and No/100 ($50.00) dollars, the same then and there being the corporal personal property of the said 'owner' from the possession of the said 'owner' without the consent of said 'owner', and with the intent then and there to deprive the said 'owner' of the value of the same, and to appropriate same to the use and benefit of them, the said Billy Joe Barnes and Johnny Leach against the peace and dignity of the State."

This conclusion of the Texas Court of Criminal Appeals was not acceptable to the United States Supreme Court in *Barnes* v. *Texas, supra,* and it so stated in the remand of the case to the Texas court. (Cf. 390 S.W. 2d 266.)

The similarity of the allegations contained in the *Barnes* complaint to those relied upon by the magistrate to issue the warrant of arrest in the case at bench is undeniable.

It follows that the statutory authority permitting the issuance of a warrant of arrest premised solely upon the formal allegation couched in the language of the charged offense suffers from a defect of constitutional proportions violative of the Fourth Amendment as applicable to the states through the Fourteenth Amendment.

In the absence of a valid warrant of arrest, the respondent urges the arrest was justified independent of the warrant based on the personal knowledge of the arresting officer, T. Del Coma, which was sufficient to amount to probable cause for the arrest, relying upon the holdings in *People* v. *Castro,* 249 Cal.App.2d —;[4] *People* v. *Grubb,* 250 Cal.App.2d —;[5] *People* v. *Sesslin,* 252 Cal.App.2d —.)[6]

We must concur in the result urged by respondent although not necessarily with its reasoning. The presence of probable cause for the arrest by the personal knowledge of the arrest officers has been held to validate an otherwise invalid arrest, subjected to attack or *Giordenello-Aguilar* grounds, in *Byrnes* v. *United States,* 327 F.2d 825, 833; *Hollingsworth* v. *United States,* 321 F.2d 348; *Ford* v. *United States,* 352 F.2d 927, 931.) However, such a result may induce officers to rely entirely upon arrests based upon "prob-

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[4] 249 A.C.A. 190, 196-198

[5] 250 A.C.A. 820

[6] 252 A.C.A. 130, 134-135

able cause." Such a result would negate the Fourth Amendment almost in its entirety *(United States* v. *Ventresca,* 380 U.S. 102, 108-109; *Gilbert* v. *United States* (9th Cir. 1966) 366 F.2d 923, 930) Accordingly, we add that in the instance in which an officer has in good faith obtained a warrant for the arrest of the accused *and,* additionally, personally has knowledge to constitute probable cause for the arrest of the accused at the time he attempts to execute the warrant of arrest, otherwise invalid on *Giordenello-Aguilar-Barnes* grounds, the arrest has been lawfully made and any of the fruits of the lawful search to such an arrest are fully admissable in evidence if material and relevant to prove any element of the offenses charged.

Three acts of the district attorney during trial are assigned as prejudicial misconduct requiring reversal. Addi- it is asserted that the answer of the witness Slocum, in concluding the defendant and another had in fact burglarized the coin shop, was prejudicial error.

In the latter instance, the jury was admonished to disregard the answer after defendant's motion to strike had been granted. No further objection was made to the answer by defense counsel.

The remaining three events arose out of and involved certain questions posed to various witnesses by the district attorney. In one instance a witness was questioned concerning some typewriters which he had observed in defendant's home and which the defendant had offered to sell to him inexpensively since they were "hotter than a $3 bill." Contrary to defendant's contention, this evidence would be admissable to demonstrate defendant's motive and intent in the possession of other stolen property. (Cf. *People* v *Gonzales,* 87 Cal.App.2d 867, 877; *People* v. *Raleigh,* 83 Cal. App. 2d 435, 440.)

On the second occasion during the redirect examination of Officer Del Coma, the district attorney posed the following question: "Was it at that time, that Mr. Chimel was talking about the possibility of his returning the coins that he took?" A prompt objection was made on the basis that there was no evidence of such a statement and the court was requested to assign the statement as misconduct. The court sustained the objection to the question and gave an admonition to the jury. It must be presumed the jury disregarded the testimony. In the absence of further objection or request

for instructions by defense counsel, defendant cannot now complain of the alleged misconduct. (*People* v. *Sanchez*, 65 Cal.2d —[7].)

The third cited instance of alleged misconduct involves the questioning of one of defendant's witnesses on cross-examination pertaining to his possession of some of the stolen coinage. Objection was posed on the ground the question "assumed facts not in evidence." In view of the previous testimony of one of the police officers, this witness' possession of stolen property was very much in evidence. However, the form of the question was objectionable for it went beyond the evidence by asking the witness if he were in the habit of dealing in stolen property. The court again sustained the objection and admonished the jury to disregard the question.

This court does not approve of the theatrics indulged in by the prosecuting attorney during his examination of witnesses. However, in view of the admonition and the failure of defense counsel to further urge this act as misconduct, it must once again fall within the rule enunciated in *Sanchez, supra*, 65 Cal. 2d —[8].)

It has long been the rule that unless the results of misconduct of the prosecuting attorney cannot be obviated by appropriate instructions to the jury by the trial court, the error cannot be presented to the appellate court on such misconduct absent an assignment of such misconduct as error, coupled with a request to the trial court to instruct the jury to disregard it. (*People* v. *Hampton*, 47 Cal.2d 239, 240-241; *People* v. *Sampsell*, 34 Cal.2d 757, 764.)

In reviewing the above-enunciated error, contained in the allegation of Count II in the information which was read to the jury, and the errors, if any, in the cited instances of misconduct by the district attorney, we conclude the erroneous inclusion of this allegation in the information, in the instance in which the charged offense was not submitted to the jury, and the other purported errors, were not sufficiently prejudicial to defendant so as to constitute a reasonable probability or possibility of a different result in the absence of the complained error or errors. (*Fahy* v. *Connecticut*,

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[7] 65 A.C. 868, 883

[8] 65 A.C. 868, 883

375 kU.S. 85, 86 [84 S.Ct. 229, 230]; *People* v. *Watson*, 46 Cal.2d 818, 835-836; *People* v. *Bostick*, 62 Cal.2d 820; *People* v. *Ross*, 67 Cal.2d —.[9])

Judgement is affirmed.

s/McCabe, P.J.

We concur:

s/Kerrigan, J. s/Tamura, J.

[9] 67 A.C. 58k

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA, IN BANC

THE PEOPLE, Plaintiff and Respondent,

v.

GERALD SESSLIN, Defendant and Appellant.

OPINION—Filed April 10, 1968

An information charged defendant and Frank Harper with seven counts of forgery and two counts of grand theft. Defendant and Harper waived trial by jury and stipulated that the trial judge decide the case on the transcript of the preliminary hearing. The trial court found defendant guilty of one count of forgery and dismissed the other eight counts against Defendant. Defendant appeals.

We hold that the (1) arrest warrant issued solely upon the complainant's "information and belief" [See Dissenting Opinion] cannot stand if the complaint or an accompanying affidavit does not allege underlying facts upon which the magistrate can independently find probable cause to arrest the accused; (2) sections 806, 813, and 952, of the Penal Code do not authorize the issuance of warrants of arrest based solely upon complaints couched in the language of the charged offense and therefore do not violate the Fourth Amendment; (3) handwriting exemplars taken incidental to an illegal arrest are inadmissible; (4) the admission of defendant's handwriting exemplars constituted prejudicial error.

On January 12, 1966, Police Officer Hargraves signed a nine-page felony complaint.[1] On the same day, a judge of

[1] The first page of the complaint states: "*Jack Hargraves* of the County of Los Angeles who, being first duly sworn on oath, upon information and belief complains and says: That on or about the *16th* day of *December, 1965,* and at and in the county of Los Angeles, State of California the crime of *Forgery of Fictitious Name,* in violation of Section 470, Penal Code, a felony was committed by *Gerald Sesslin and Frank Wesley Wright Harper* who, at the time and place last aforesaid, did wilfully, unlawfully, fraudulently and feloniously make, pass, utter and publish a certain fictitious check and order in writing for the payment of money in the

the municipal court issued a warrant for the arrest of defendant and Harper. On the next day Officer Hargraves, acting pursuant to the warrant, arrested defendant in his office. Hargraves advised defendant of his right to counsel and his right to remain silent and further informed him that he did not have to give any handwriting exemplars. At Hargraves' request, however, defendant wrote out an exemplar. Later, at the police station, he gave further exemplars.

An expert witness testified that the handwriting in the exemplars and the handwriting in the forged $5,800 check were executed by the same person. This testimony comprised the only evidence establishing that defendant signed the fictitious name on the check. Although defendant offered timely objections to the admissability of the exemplars, the trial court permitted their introduction on the ground that the prosecution obtained them as an incident to a valid arrest and during defendant's legal detention.

I

The Fourth Amendment requires that "no warrant shall issue but upon probable cause supported by oath or affirmation."[2] In Giordenello v. United States (1958) 357 U.S.

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sum of *Four Hundred fifty-seven and 00/100* Dollars *$457.00* knowing said check to be fictitious, as aforesaid, with intent then and there to cheat and defraud *Nellie Allen, Commerce Bank, and Handy Payments,* a corporation. Said complainant therefore prays that a warrant may be issued for the arrest of the defendant who may then be dealt with according to law." The italicized portions are those filled in by the complainant Hargraves. The rest of the complaint is a printed form. Each of the remaining eight pages of the complaint relates to one of the remaining eight counts, regarding other fictitious checks allegedly made and passed by defendant and Harper. Each page duplicates the first page of the complaint except for differences in the amount of the check involved and the names of the persons allegedly defrauded. Page 3 of the complaint relates to the $5,800 check which served as the basis of defendant's conviction.

[2] The California Constitution and the Penal Code contain similar provisions. Article I, section 19 of the Cali-

480, the United States Supreme Court held that a complaint which merely stated the affiant's conclusions couched in the words of the statute [3] cannot support a valid arrest warrant. Justice Harlan said: The purpose of the complaint, then, is to enable the appropriate magistrate, . . . to determine whether the 'probable cause' required to support a warrant exists. The Commissioner must judge for himself the persuasiveness of the facts relied on by a complaining officer to show probable cause. He should not accept without question the complainant's mere conclusion that the person whose arrest is sought has committed a crime. . . . [Here] the complaint contains no affirmative allegation that the affiant *spoke with personal knowledge of the matters contained therein;* it does not *indicate any sources for the complainant's belief;* and it does not set forth *any other sufficient basis upon which a finding of probable cause would be made.*" (Italics added.) (*Id.* at 486.)

Although the Attorney General correctly points out that *Giordenello* rested on the federal rules of criminal procedure applicable to a federal prosecution, Aguilar v. Texas (1964) 378 U.S. 108, grounded these rights in the Constitution. In that case, which involved a search warrant issued by a Texas justice of the peace, the United States Supreme Court said, "The principles announced in *Giordenello* derived, therefore, from the Fourth Amendment, and not

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fornia Constitution states that ". . . no warrant shall issue, but on probable cause, supported by oath or affirmation, . . ." Section 813 of the Penal Code provides: "When a complaint is filed with a magistrate charging a public offense originally triable in the superior court of the county in which he sits, if such magistrate is satisfied from the complaint that the offense complained of has been committed and that there is *reasonable ground to believe that the defendant has committed it,* he must issue a warrant for the arrest of the defendant; . . ." (Italics added.)

[3] The complaint in *Giordenello* stated: "The undersigned complainant [Finley] being duly sworn states: That on or about January 26, 1956, at Houston, Texas in the Southern District of Texas, Veto Giordenello did receive, conceal, etc., narcotic drugs, to-wit: heroin hydrochloride with knowledge of unlawful importation; in violation of Section 174, Title 21, United States Code."

from our supervisory power." (*Id.* at 112 fn. 3.) The court also determined that Ker v. California (1963) 374 U.S. 23, which stated that "the standard of reasonableness is the same under the Fourth and the Fourteenth Amendments," (374 U.S. at 33) "must certainly be read as holding that the standard for obtaining a search warrant is likewise 'the same under the Fourth and Fourteenth Amendments.'" (378 U.S. at 110.)

Aguilar held that, "although an affidavit may be based on hearsay information and need not reflect the direct personal observations of the affiant, . . . the magistrate must be informed of: [1] some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and [2] some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed, . . . was 'credible' or his information was 'reliable.' Otherwise, 'the interferences from the facts which lead to the complaint' will be drawn not 'by a neutral and detached magistrate,' as the Constitution requires, but instead, by a police officer 'engaged in the often competitive enterprise of ferreting out crime,' *Giordenello* v. *United States.*" (*Id.* at 114-115.)

In Barnes v. Texas (1965) 380 U.S. 253, in a case involving an arrest warrant, the Supreme Court in a per curiam opinion cited *Giordenello* and *Aguilar* as the sole basis for reversal of the conviction.[4] *Barnes* demonstrates

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[4] The Texas Court of Criminal Appeals held the following warrant valid on the assumption that *Giordenello* did not apply to the states: "That heretofore, to-wit: on or about the 29th day of May, A.D. 1962, and before the making and filing of this Complaint, in the County of Lubbock and State of Texas, Billy Joe Barnes and Johnny Leach did then and there unlawfully and fraudulently take from the possession of Southwestern Bell Telephone Company herein called 'owner' good and lawful United States currency of the value of over Fifty and No/100 ($50.00) dollars, the same then and there being the corporeal personal property of the said 'owner,' without the consent of the said 'owner,' and with the intent then and there to deprive the said 'owner' of the value of the same, and to appropriate same to the use and benefit of them, the said Billy Joe Barnes and Johnny Leach

that *Giordenello* and *Aguilar* must be read together as formulating the requirements of the Fourth Amendment for valid arrest as well as search warrants, and that the standards set forth in *Giordenello*, as clarified in *Aguilar*, United States v. Vantresca (1965) 380 U.S. 102, and Jaben v. United States (1965) 381 U.S. 214, apply to the states through the Fourteenth Amendment. (Ker v. California, supra, 374 U.S. 23.)

In *Jaben* the United States Supreme Court classified the types of factual showing required to meet the constitutional standards. In that case, which involved a summons ordering the defendant to appear at a preliminary hearing, the Supreme Court said that "Information in a complaint alleging the commission of a crime falls into two categories: (1) that information which, if true, would directly indicate commission of the crime charged, and (2) that which relates to the source of the directly incriminating information." (381 U.S. at 223.) This classification directly parallels and clarifies the two types of underlying circumstances which *Aguilar* held that a complaint must state in order to support a valid search warrant under the Fourth Amendment.

If such a complaint, supporting an arrest warrant, does not allege the two types of facts delineated by *Aguilar* and *Jaben*, the warrant fails and an arrest made pursuant to it is illegal. (Barnes v. Texas, supra, 380 U.S. 253.) [5] Here the complaint did not state (1) any facts which would support the complainant's belief that defendant had committed any felonies as alleged, or (2) any facts relating

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against the peace and dignity of the state." (Barnes v. State (1964) 390 S.W.2d 266, 269.)

The complaint in *Barnes*, like the complaints here and in *Giordenello*, is defective in that it merely sets forth the terms of the statute violated and does not allege any underlying facts from which a magistrate could conclude that there was probable cause to believe that the defendant had committed the alleged offense.

[5] The record contains no evidence that Officer Hargraves had probable cause to arrest defendant. We therefore need not reach the question whether there are circumstances under which an arrest made pursuant to an invalid warrant may nonetheless be legal. (Cf. People v. Chimel, *infra*.)

to the identity or credibility of the source of the complainant's information.

The Attorney General's attempt to distinguish this complaint from those held insufficient to support a valid arrest warrant in *Giordenello* and *Barnes* on the basis that the complaint concludes with a list of "Witnesses" thus misses the mark. The complaint did not allege any of the listed persons were the source of the information upon which the complainant relied in seeking a warrant for defendant's arrest, or allege any facts connecting defendant with the charged forgeries as to which the "witnesses" could testify. That a number of persons can testify to the crimes alleged in a complaint does not constitute the type of allegation which enables a "neutral and detached" magistrate *independently* to determine on the basis of the evidence before him that probable cause supports the arrest of the person charged in the complaint. (Aguilar v. Texas, supra, 378 U.S. at 109 fn. 1, 111-115; Giordenello v. United States, supra, 357 U.S. at 486-487.)

II

California's statutory scheme authorizing the issuance of arrest warrants does not violate the Fourth Amendment. When the relevant provisions (Pen. Code, §§ 806, 813, and 952) [6] are read together and construed in light of

[6] Section 806 provides: "A proceeding for the examination before a magistrate of a person on a charge of an offense originally triable in a superior court must be commenced by written complaint under oath subscribed by the complainant and filed with the magistrates; . . . Such complaint *may be verified oninformation and belief.*" (Italics added.)

Section 952 provides: "In charging an offense, each count shall contain, and shall be sufficient if it contains in substance a statement that the accused has committed some public offense therein specified. Such statement . . . *may be in the words of the enactment describing the offense. . . .*" (Italics added.)

Section 813 provides that a magistrate *must* issue a warrant for the arrest of the defendant "if such magistrate is satisfied from the complaint that the offense complained of

Giordenello-Aguilar, they meet the constitutional test. A complaint based on "information and belief" and couched in the statutory language of the alleged offense may support a valid arrest warrant *if* the complaint alleges sufficient facts for the magistrate to conclude that probable cause supports the warrant in that the allegations indicate (1) the commission of the crime by the person whose arrest is sought, and (2) the reliability of the information and credibility of its source.

Section 813 of the Penal Code provides that the magistrate *must* issue an arrest warrant if he "is satisfied from the complaint" that "there is reasonable ground" to arrest the defendant. *Giordenello-Aguilar* requires that the magistrate may issue an arrest warrant *only if* he is satisfied from the complaint that there is probable cause to arrest the defendant. The statutory mandate does not conflict with the constitutional standard; the former must be construed in light of the latter. So interpreted, section 813 provides in effect that an arrest warrant *shall issue if, and only if,* "such magistrate is satisfied from the complaint that the offense complained of has been committed and that there is reasonable ground to believe that the defendant has committed it."

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has been commited and that there is reasonable ground to believe that the defendant has committed it."

Section 813 does not explicitly state that a magistrate may *not* issue an arrest warrant if the complaint does not allege sufficient facts from which he can independently determine that there is probable cause to arrest the defendant. (Cf. Giordenello v. United States, sup. a, at 486). Moreover, the Penal Code nowhere prescribes the contents of a complaint which would *require* the issuance of an arrest warrant under section 813. As the Attorney General points out, however, reliance in the past has been placed on sections 806 and 952 to determine the nature of the complaint sufficient to obtain a warrant under section 813. Although such reliance contravenes the *Giordenello-Aguilar* rule, sections 806 and 952 are not thereby rendered unconstitutional. Sections 806 and 952 directly relate to accusatory complaints, not complaints to support a warrant. *Giordenello-Aguilar* merely teaches that we not construe these sections to provide that complaints drawn in compliance with them are automatically sufficient to support a valid arrest warrant.

That the complaint is based on "information and belief" rather than personal knowledge of the affiant (§ 806), or phrased in terms of the statutory language of the alleged offense (§ 952) does not resolve the issue. The crucial factor lies not in the form of the allegations, but in the sufficiency of the facts alleged "to enable the appropriate magistrate, . . . to determine whether the 'probable cause' required to support a warrant exists." (Giordenello v. United States, supra, 357 U.S. at 486; Aguilar v. Texas, supra, 378 U.S. at 115.)

III

The admission into evidence of the handwriting exemplars procured after after defendant's arrest and during his illegal detention violated his rights under the Fourth Amendment. The state may not use evidence to convict an accused which it obtained by exploiting an illegal arrest or detention. (Wong Sun v. United States (1963) 371 U.S. 471, 484-485; Mapp v. Ohio (1961) 367 U.S. 643, 655; Silverthorne Lumber Co. v. United States (1920) 251 U.S. 385, 392; People v. Stoner (1967) 65 Cal.2d 595, 598; People v. Bilderbach (1965) 62 Cal.2d 757, 763; People v. Cahan (1955) 44 Cal.2d 434, 445-450.)

In People v. Bilderbach, supra, 62 Cal.2d at 766, we held that Ker v. California, supra, 374 U.S. 23, required us to apply the test in Wong Sun v. United States, supra, 371 U.S. 471, to determine the admissibility of evidence obtained as a result of an illegal arrest, search, or seizure. Here the police obtained a handwriting exemplar shortly after arresting defendant at his office pursuant to an invalid warrant and then required further exemplars after taking him to the police station. As we explained in *Bilderbach,* the Supreme Court in *Wong Sun* held that an illegal arrest immediately preceding the procurement of evidence "rendered [that evidence] inadmissible as the 'fruit' of the agents' illegal action. . . . Under such circumstances it is unreasonable to infer that [defendant's] response was sufficiently an act of free will to purge the primary taint of the unlawful invasion." (62 Cal. 2d at 765.) The handwriting exemplars were thus "come at by the exploitation of [the] illegality" (Wong Sun v. United States, supra, 371 U.S. at 488) of the arrest and detention. The admission of the exemplars would therefore "thwart the laud-

able policies underlying the exclusionary rule." (People v. Bilderbach, supra, 62 Cal.2d at 768; see also Bynum v. United States (D.C. Cir. 1959) 262 F.2d 465, 466-467; State v. Miller (N.M. 1966) 412 P.2d 240, 244.)

We find no basis upon which to conclude that the connection between the exemplars and the illegal arrest has "become so attenuated as to dissipate the taint." (People v. Bilderbach, supra, 62 Cal.2d at 766.) As the Supreme Court explained in *Wong Sun*, "not . . . all evidence is 'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is 'whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.'" (371 U.S. at 488.)

That degree of "attenuation" which suffices to remove the taint from evidence obtained directly as a result of unlawful police conduct requires at least an intervening independent act by the defendant or a third party which breaks the causal chain linking the illegality and evidence in such a way that the evidence is not in fact obtained "by exploitation of that illegality." Consent by the defendant, if "sufficiently an act of free will to purge the primary taint of the unlawful [arrest]" (Wong Sun v. United States, supra, 371 U.S. at 886), may produce the requisite degree of "attenuation."

The prosecution urges that there was an intervening act of free will between the illegal arrest and the procurement of the handwriting exemplars that dissipated the taint of the primary illegality. The trial court, however, made no finding that the prosecution sustained its burden [7] of showing that defendant freely gave the exemplars. (See People v. Bilderbach, supra, 62 Cal.2d 757, 763; cf. People v. Henry (1967) 65 Cal.2d 842, 846.)

Moreover, on the basis of the record before us we could not characterize as unreasonable an inference that the connection between the illegal arrest and the procurement of the exemplars lacked the requisite attenuation. Defendant

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[7] Castaneda v. Superior Court (1963) 59 Cal.2d 439, 443-444; People v. Gorg (1955) 45 Cal.2d 776, 782.

produced the first exemplar shortly after the illegal arrest. This illegality tends to vitiate any claimed consent in two respects: (1) the arresting officer secured entry to defendant's office under the purported authority of a warrant, and the entry may have been essential to obtaining consent; (2) the consent may have been dictated by an implied assertion of authority by the officer. (See People v. Haven (1963) 59 Cal.2d 713.)

We have noted, supra, Officer Hargraves' testimony that prior to obtaining the first exemplar he informed defendant that he had a right to remain silent, a right to counsel at all stages of the proceedings, and a right not to give any handwriting exemplars.[8] Since the rendition of exemplars does not amount to self-incrimination within the meaning of the Fifth Amendment, these warnings were not required for the protection of defendant's Fifth Amendment rights. (Gilbert v. California (1967) 388 U.S. 263, 266-267; People v. Graves (1966) 64 Cal.2d 208, 210-211.) We must consider, however, whether the officer's advice and defendant's response makes unreasonable as a matter of law the inference that the officer secured the incriminating evidence through exploitation of his violation of defendant's Fourth Amendment rights.

The rendition of similar advice, as an added safeguard to insure defendant's voluntary waiver of his constitutional rights, does not, in itself, preclude application of the *Wong Sun* exclusionary rule. Thus in People v. Bilderbach, supra, 62 Cal.2d 757, defendant contended that his confession was inadmissible both because the record did not indicate that the officers had complied with the requirements of People v. Dorado (1965) 62 Cal.2d 338, and because the confession constituted the "fruit" of an illegal search. We held that even in the event that the prosecution upon retrial could

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[8] Hargraves advised defendant "that he was entitled to remain silent, that he did not have to tell this investigator anything or answer any questions that I might ask, that he was entitled to an attorney at all stages of the proceedings, including that interview and any interview I might have with him, that he did not have to give me any handwriting exemplars, that if he did give me any handwriting [exemplars], that they would probably or might be used against him in court in a criminal proceeding."

establish that defendant intelligently waived his *Dorado* rights prior to giving the confession, the trial court would still be required to determine whether the taint from the illegal search had been dissipated.[9] In *Wong Sun* itself, the United States Supreme Court had to determine whether Wong Sun's confession was the "fruit" of an illegal arrest. In its statement of facts the court noted that prior to his confession an agent of the Narcotics Bureau had advised him of his right to counsel and his right to remain silent. (371 U.S. at 476.) In holding that the illegal arrest did not taint the confession, the court, however, relied solely "[o]n the evidence that Wong Sun had been released on his own recognizance after a lawful arraignment, and had returned several days later to make the statement. . . ." (P. 491.) We conclude, therefore, that although the advice given in the instant case may be a factor showing an intervening act of free will (cf. People v. Stoner, supra, 65 Cal.2d 595, 600), it does not in isolation demonstrate as a matter of law the requisite attenuation.

Defendant furnished the second set of exemplars while illegally detained and with the knowledge that the People already had one sample of his handwriting. "[T]he compulsion inherent in custodial surroundings" (Miranda v. Arizona (1966) 384 U.S. 436, 458), especially when considered in conjunction with the prior illegally obtained exemplar (see Fahy v. Connecticut (1963) 375 U.S. 85, 90-91; People v. Spencer (1957) 66 Cal.2d 158, 163-168), precludes our holding as a matter of law that the prosecution sustained its burden of showing that defendant freely consented to the officers' procurement of the second set of exemplars.

If the question of the admissibility of the exemplars should arise upon retrial, the prosecution and the defense may introduce further evidence bearing on this question. (Cf. People v. Doherty (1967) 67 A.C. 1, 9 fn. 7; People v. Green (1965) 63 Cal.2d 561, 565.) In such event, the trial

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[9] We noted that "[e]ven though statements are free of 'oppressive circumstances' and otherwise voluntarily rendered, they are not exempt from attack on constitutional grounds if they are the product of an illegal search." (People v. Bilderbach, supra, 62 Cal.2d 757, 767.)

court will determine the admissibility of the exemplars upon its examination of the facts in accordance with the above principles.

The prosecution's only evidence that defendant signed the forged check consisted of the handwriting expert's testimony that the signature on the check and the handwriting exemplars were executed by the same person. The admission into evidence of the handwriting exemplars obtained in violation of defendant's rights under the Fourth Amendment therefore constituted prejudicial error.

In sum, in holding that an arrest warrant issued solely upon the complainant's "information and belief" cannot stand if the complaint or accompanying affidavit does not allege underlying facts upon which the magistrate can independently find probable cause to arrest the accused, we do no more than apply constitutional principles long held and clearly expressed by the decisions of the United States Supreme Court. To do less would be to expose our ruling to the unanswerable charge of constitutional infirmity.

The judgment is reversed.

Tobriner, J.

We concur:

Traynor, C. J. Peters, J. Sullivan, J.

Crim. 11519

PEOPLE

v.

SESSLIN

DISSENTING OPINION BY MOSK, J.

I dissent.

Taking the majority conclusions seriatim, I would hold that (1) an arrest warrant based on the complainant's information and belief is valid; (2) sections 806, 813, and 952 of the Penal Code have consistently and reasonably been interpreted in practice as authorizing the issuance of warrants of arrest based upon complaints couched in the language of the charged offense, and the sections are not violative of the Fourth Amendment; (3) handwriting exemplars are admissible regardless of whether they are taken before or after arrest and the nature of the arrest itself is irrelevant; (4) the admission of defendant's handwriting exemplars was neither error nor prejudicial.

Penal Code section 806 specifically authorizes complaints sworn to on the information and belief of the affiant. As a result, a practice has developed among California law enforcement officers of preparing and signing complaints on information and belief, and in so doing the officers on occasion merely employ the language of the criminal statute allegedly violated. This has been deemed appropriate under accepted interpretations of Penal Code sections 806, 813, and 952. No California case has held to the contrary, although all three statutes have been in the code since its adoption in 1872.

Authorities relied upon by the majority are distinguishable. Giordenello v. United States (1957) 357 U.S. 480, involved the supervisory power of the federal courts in applying rule 4(a) of the Federal Rules of Criminal Procedure to federal prosecutions. Aguilar v. Texas (1963) 378 U.S. 108, considered the specificity requirements and legality of a warrant to search and not to arrest. To date no United States Supreme Court case has categorically rejected California's statutory scheme of permitting a magistrate to

exercise his judicial discretion to issue an arrest warrant upon a complaint sworn to on information and belief. In this state *a judicial function,* the magistrate's discretion, is involved in issuance of the warrant of arrest; the complaint is merely an accusatory pleading and the beginning, not necessarily the end, of the magistrate's inquiry. The process is seldom *pro forma* in practice. It is not uncommon for the magistrate to informally interrogate the complainant at length before issuance of the arrest warrant. He must be *satisfied* as to the sufficiency of the complainant's information and belief before exercising his judicial authority (Pen. Code, § 813). Since Barnes v. Texas (1965) 380 U.S. 253, is merely a per curiam opinion, it is not persuassive authority upon which to base categorical rejection of our generally accepted practice. Indeed, the majority concede in section II of their opinion that California's statutory scheme authorizing the issuance of arrest warrants does not violate the Fourth Amendment. I agree generally with their rationale and completely with their conclusion. Since the officers and the magistrate complied with the statutes, the absence of constitutional infirmity in the process should compel us to conclude that the warrant issued here was valid.

Nevertheless, I would join the majority in a caveat to law enforcement agencies for the future. While a complaint may be sworn to on information and belief, it is preferable out of an excess of caution that the complaint briefly indicate the underlying circumstances—the factual information—upon which the belief is based that a violation of law occurred and that the person whose arrest is sought committed the crime.

Even if we were to agree *arguendo* that the arrest warrant here was fatally defective, we would be obliged, under the authority of People v. Bilderbach (1965) 62 Cal.2d 757, to exclude only that evidence obtained as the direct and proximate result of the illegal arrest. The test, devised in Wong Sun v. United States (1963) 371 U.S. 471, 487, is "whether granting establishment of the primary illegality, the evidence to which the instant objection is made has been come at by *exploitation* of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." (Italics added.)

Thus if the officers, using the faulty warrant, had seized existing objects from the person or immediate constructive possession of the defendant at the time of the arrest, as the contraband in *Bilderbach,* or had extracted a statement from him, as in *Wong Sun,* such objects or statement would necessarily be denied evidentiary consideration. That is not the case at bench. No evidence was taken here in "exploitation" of an illegal warrant.

Nevertheless the majority find "no basis upon which to conclude that the connection between the exemplars and the illegal arrest has 'become so attenuated as to dissipate the taint'" and they further explain that by "attenuation" they mean "at least an intervening independent act by the defendant or a third party which breaks the causal chain linking the illegality and evidence." They concede that consent by the defendant would provide such intervening act necessary to produce the requisite degree of attenuation.

Accepting the concession that freely given consent purges the taint of an allegedly unlawful arrest under *Wong Sun,* I find it difficult thereafter to follow the labyrinthine course to the majority's conclusion, for no one has heretofore raised any serious issue of the defendant's consent having been freely given.

The handwriting exemplars were obtained by officers during a process of interrogating the defendant in his office. The officers advised him of his constitutional rights as prescribed in Escobedo v. Illinois (1964) 378 U.S. 478, and People v. Dorado (1965) 62 Cal.2d 338.[1] There can be no

[1] This case came to trial on June 20, 1966, one week after the effective date of the rule in Miranda v. Arizona (1966) 384 U.S. 436. (See Johnson v. New Jersey (1966) 384 U.S. 719.) However, at that time defendant and his counsel stipulated in open court that the cause be submitted on the testimony contained in the transcript of proceedings had at the preliminary hearing. The preliminary examination took place on January 28 and February 1, 1966, at which time *Escobedo-Dorado* and not *Miranda* was the rule in effect. Had counsel later desired to invoke *Miranda,* he had two subsequent opportunities to seek relief from his stipulation: on June 20, 1966, the court continued the case to August 5, 1966, and on that date to August 15, 1966. On the

denial that adequate *Escobedo-Dorado* admonitions were given and were directly related to the request for handwriting exemplars.[2]

After being given appropriate *Escobedo-Dorado* admonitions, and declining a proffered opportunity to telephone his counsel, the defendant waived his rights and willingly submitted handwriting exemplars. Unquestionably the waiver was knowingly made; the defendant was not a naive victim of police imposition.[3] This case involve a knowledgeable defendant in the familiar, comfortable environment of his own business office; elements in the shrewdly devised plot were a $5,800 check, and elaborate efforts to enmesh an official of a banking institution in the check-passing fraud.

In giving *Escobedo-Dorado* warnings under these circumstances, the officers were more cautious and solicitous of defendant than current authority requires. This court held in People v. Graves (1966) 64 Cal.2d 208, that such admonitions need not be given as a prerequisite to obtaining handwriting exemplars. We reasoned (at p. 211) there is "no support in *Escobedo* for invoking the right to counsel to block scientific crime investigation. Reliance on handwriting exemplars for expert analysis is not a substitute for thorough scientific investigation of crime but an excellent example of such investigation. To preclude the police from asking for such exemplars would foster reliance instead on the very inquisitorial methods of law enforcement that *Escobedo* deems suspect." (Fn. omitted.)

The *Escobedo-Dorado* admonitions, though not compulsory under the *Graves* doctrine, clearly provided that "in-

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latter date defendant was found guilty of count 3, and the remaining counts were ordered dismissed for insufficiency of the evidence.

[2] See footnote 8, majority opinion, for the quotation from Deputy Sheriff Hargraves' testimony. In addition, at another point the officer testified, "I asked him if he wished to call an attorney, and he stated that he did not wish to do so at that time."

[3] Most familiar in this law enforcement field is the saga of the hapless wino who passes a rubber check to his friendly bartender in a neighborhood pub. This is clearly not such a case.

tervening independent act" which the majority require to break the causal chain between the arrest they find invalid and the obtaining of the exemplars. Thus even under the formidable standards prescribed by the majority, the exemplars were admissible.

I would not have reached that point, however. Although generally the physical evidence seized pursuant to an arrest depends upon the legality of the arrest to justify its seizure, the taking of exemplars, fingerprints, blood samples, photographs, and similar devices receive their legitimacy independently as part of approved scientific law enforcement investigatory processes (People v. Graves, supra, 64 Cal.2d 208, 211; 8 Wigmore on Evidence (McNaughton rev. 1961) § 2265).

The prosecution met its burden of showing that the defendant freely gave the handwriting exemplars on both occasions. The police officers so testified. The record discloses no hint of conflict on the issue, for there is not one line of testimony suggesting an absence of consent. Thus the majority rely solely upon the time element, stressing that the first exemplars were given "shortly after the illegal arrest." Whether the exemplars were given before, during or after arrest is wholly irrelevant, if not given in exploitation of an illegal arrest and if there was an independent intervening act between the purportedly illegal arrest and the writing of the exemplars. As I have shown, the *Escobedo-Dorado* admonitions were such independent intervention.

Finally, the majority opinion contains no supportable rationale whatever for excluding the second set of exemplars taken at a later time at the sheriff's station, other than reference to the "compulsion inherent in custodial surrounding." That issue was settled two years ago in *Graves,* where exemplars taken in the police department offices and again later while defendant was in custody were held admissible in evidence.

The admission of the handwriting exemplars was not error, and consequently not prejudicial. Therefore, I would affirm the judgment.

Mosk, J.

We concur:

McComb, J. Burke, J.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA, IN BANK

Crim. 11607

THE PEOPLE, Plaintiff and Respondent,

v.

TED STEVEN CHIMEL, Defendant and Appellant.

OPINION—Filed April 10, 1968

In this case our conclusion that the judgment of conviction should be affirmed rests upon the following propositions: (1) Although the warrants for arrest constitutionally failed under People v. Sesslin, *ante*, p. —, the arrests themselves can stand upon the ground of probable cause; (2) since the search of defendant's home at the time of the execution of the first arrest warrant constituted a "reasonable" search, the coins and other numismatic items thereby seized could properly be introduced into evidence; (3) the failure to strike count II [See Dissenting Opinion] from the information after the committing magistrate held defendant to answer for only counts I and III did not constitute prejudicial error.

The rather bizarre facts of this case, which we must set forth in some detail as the foundation for our subsequent rulings, involve two burglaries of old and valuable coins. The first of these occurred at the Pulati home; the second at a coin shop called the Money Vault.

The night of the Pulati burglary, February 2, 1965, marked the one night, according to Mrs. Pulati, that defendant had missed a meeting of one of the three coin clubs in which defendant and the Pulatis were concurrent members during a period of approximately one-half year. Mrs. Pulati testified that defendant frequently dropped over to discuss coins with her husband and herself, that he had asked them whether their coins were insured, and that he was the only person besides the party who sold them their home who knew that the Pulatis kept coins there. Mrs. Pulati further testified that when she and her husband returned home on February 2, 1965, she found that, although the house had not been ransacked and valuable items in

plain sight had not been taken, two drawers full of coins had been stolen.

The Money Vault burglary took place on the night of August 14, 1965. Slocum, the owner, testified that a few months before the burglary defendant had told him about a "big deal" he "had going" and had also asked him whether his coins were insured and, if so, whether Slocum wanted his shop "knocked over." Slocum thought defendant was joking. Slocum further testified that the stolen coins were taken from the area in the shop where he kept his valuable coins, and that only one other collector besides defendant knew where he had put them. The day after the burglary defendant called Slocum and said, "Well, I see you knocked your place over." After Slocum told defendant that it was a "sloppy" job, defendant replied that he had heard the job was "professional"; defendant then denied committing the burglary.

Ambrose, a neighbor of defendant, testified that on the evening of the Money Vault burglary he had asked defendant to accompany him on a bicycle ride but that defendant had refused because he had a "big deal going." Defendant then showed Ambrose a walkie-talkie in defendant's car that he said he planned to use and, manipulating it, unsuccessfully tried to contact someone called "Chuck." The next day defendant told Ambrose that "they" had broken into a coin shop. Later the same day, defendant called Ambrose back and told him that he had been joking. A few days later, when Ambrose read the newspaper account of the Money Vault burglary, he called the police and told them about defendant's remarks.

Officer Del Coma, who had responded to the burglary call at the Money Vault on the night of the crime, arrested defendant on August 25, 1965. According to the officer, he and defendant talked about the burglary generally and discussed the possibility of the return of the stolen coins, although "it was not definitely labeled as to who was going to return the coins." On August 30, the defendant returned to the police station with Charles Hamburger and Jones, an attorney representing Hamburger, for the purpose of negotiating the return of the Slocum coins in order to obtain a civil release from Slocum.

About a week after the conference, during which the

parties disagreed over Slocum's obligation to itemize the stolen items, Slocum called defendant about his failure to return the coins. Slocum testified that defendant answered evasively. At approximately the same time, Officer Del Coma talked to Hamburger as to defendant's plans for his share of the stolen coins.

During the first week of September, Parsons, an owner of another coin shop, informed Officer Del Coma that defendant had told him that he was involved in the Money Vault burglary. Parsons testified that when he advised defendant to return the coins to Slocum, defendant stated that he had already given them to someone else.

Officer Del Coma obtained an arrest warrant for defendant for the burglary of the Money Vault on the morning of September 13, 1965. At approximately 4 p.m. Officer Del Coma, who worked for the City of Orange, accompanied by two Santa Ana police officers, went to defendant's home in Santa Ana; defendant arrived 15 minutes later. Officer Del Coma showed defendant the warrant, placed him under arrest, and advised him of his rights. Over defendant's objection, officer Del Coma then searched the entire house and garage. Del Coma found and seized numerous coins and other numismatic items. None of the seized items were identified as those taken from the Money Vault.

Del Coma took defendant into custody and compiled an inventory of the seized items. Defendant was then released on bail. Two days later the Pulatis identified some of the seized items as the coins taken from their home in February 1965. On the basis of the Pulatis' identification, the Santa Ana police obtained a second warrant for defendant's arrest on September 16, 1965.

I

The complaints upon which both the September 13 and the September 16 arrest warrants were issued are the same type of printed form as the complaint held insufficient to support a valid warrant in People v. Sesslin, supra, *ante*, p. —. For the reasons set forth in *Sesslin*, we hold that the warrants here, because of constitutional infirmity under the *Giordenello-Aguilar* standard, cannot support a legal arrest.

The legality of an arrest, however, cannot depend exclusively upon the validity of the warrant pursuant to which the arrest is executed since an arrest without a warrant

may stand if based on probable cause. (Go-Bart Co. v. United States (1931) 282 U.S. 344, 356; Stallings v. Splain (1920) 253 U.S. 339, 342.)[1] In Giordenello v. United States (1958) 357 U.S. 480, 487, the government argued to the Supreme Court that "the arrest was justified *apart* from the warrant." The court held that, although the government could not urge probable cause as the basis for the legality of the arrest for the first time at this stage, "this is not to say, however, that in the event of a new trial the Government may not seek to justify petitioner's arrest without relying on the warrant." (*Id.* at 488.)

In the instant case the prosecution sought to justify the arrest of defendant independently of the warrant, and the trial court found that "there was probable cause [based on] all the evidence relating to the information [Officer] Del Coma had at the time of the arrest." The defendant here, unlike the petitioner in *Giordenello,* therefore, obtained ample notice that the prosecution did not rest the justification for the arrest solely on the warrant.

A search undertaken pursuant to an invalid search warrant which could otherwise be upheld as incident to an arrest based upon probable cause presents an analogous problem.[2] In sustaining the validity of such a search, the

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[1] [T]here was probable cause sufficient to support a warrantless arrest. Such an arrest is valid despite an invalid warrant. Ferganchick v. United States, 374 F.2d 559 (9th Cir. 1967); Bell v. United States, 371 F.2d 35 (9th Cir. 1967)." (Dearinger v. United States (9th Cir. 1967) 378 F.2d 346, 347, cert. den. 388 U.S. .) Other federal cases holding an arrest valid when based on probable cause, even though the arresting officer acted pursuant to an arrest warrant invalid under *Giordenello,* include: United States v. Hall (2d Cir. 1965) 348 F.2d 837, 841, cert. den. 382 U.S. 947; United States v. White (4th Cir. 1965) 342 F.2d 379, 381-382, cert. den. 382 U.S. 871; Hagans v. United States (5th Cir. 1963) 315 F.2d 67, 69, cert. den. 375 U.S. 826.

[2] In Marron v. United States (1927) 275 U.S. 192, the police officers conducted a search of defendant's business premises pursuant to a valid search warrant but seized items which were not specified by the warrant. After stating that "the requirement that warrants shall particularly de-

court in People v. Castro (1967) 249 A.C.A. 190, 196-197, relied upon two reasons which equally apply to the instant issue: "*First*: Although certain nonwarrant arrests and searches are permissible, the policy of the law is to encourage officers to use search warrants. . . . *Second*: The rule which excludes evidence obtained by illegal searches was adopted [partially] for the purpose of eliminating the incentive for police officers to use illegal methods. [Citations.] . . . That principle does not call for a rejection of the evidence in this case. Here the officer was guilty of no wrongdoing except faulty draftsmanship. . . . Given a choice between a nonwarrant arrest and a search based upon a magistrate's warrant, officers will be impelled to forego the latter, if a defect in the warrant procedure will invalidate an arrest and search which would have been legal without a warrant."[3]

Officer Del Coma had probable cause to arrest defendant on September 13 when he obtained a warrant for defendant's arrest for the burglary of the Money Vault and, pursuant to it, arrested defendant.[4] Moreover, no evidence

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scribe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another" (*id.* at 196), the Supreme Court held the seizure valid on the ground that the search by means of which the officers found the seized items was incident to the arrest of defendant's agent who was committing a crime on the premises in the presence of the officers. (See 275 U.S. at 198-199.)

[3] "A contrary holding would turn law enforcement into a monstrous chess game in which the slightest tactical error by law enforcement officers could be fatal to the successful prosecution of a person accused of a heinous offense even though the intent, purpose and spirit of the Constitution had not been violated." (People v. Grubb (1967) 250 A.C.A. 820, 827; see also People v. Tillman (1965) 238 Cal.App.2d 134, 139.)

[4] The trial court relied on the following evidence in finding that Officer Del Coma had probable cause to arrest defendant on September 13: Del Coma knew that defendant had been in the Money Vault on the morning of the burglary and that defendant had participated in negotiations to return

even intimates that Del Coma procured the warrant in bad faith or exploited the illegality of the warrant. (Contrast Go-Bart Co. v. United States, supra, 282 U.S. 344, 358.) If Del Coma had been proceeding without a warrant in arresting defendant, the arrest would have been lawful. To invalidate the arrest here solely because the arresting officer first obtained a warrant supported by a constitutionally insufficient complaint would not further the policies of the Fourth Amendment but would subvert its preference for arrests and searches conducted pursuant to warrants.

II

The search of defendant's house and seizure of the coins and other numismatic items on September 13 constituted a "reasonable" search within the meaning of the Fourth Amendment. (Ker v. California (1963) 374 U.S. 23, 41; Agnello v. United States (1925) 269 U.S. 20, 30; People v. Cockrell (1965) 63 Cal.2d 659, 667.) Officer Del Coma acted

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the stolen coins; Del Coma had also talked to Ambrose, defendant's neighbor, a few days after the burglary, about defendant's statements relating to committing a burglary with someone named "Chuck," and Parsons, the owner of another coin shop, to whom defendant had admitted his participation in the burglary of the Money Vault. Finally, Del Coma responded to the burglary call at the Money Vault on the morning of August 15, 1965, and presumably talked to Slocum about defendant's various incriminating and evasive conversations with him.

No problem arises from defendant's first arrest by Officer Del Coma on the earlier date of August 25, 1965. The only information which Del Coma acquired after that date involved the negotiations with Slocum and Parsons' report that defendant had admitted burglarizing the Money Vault. Del Coma had already talked to the neighbor Ambrose and the owner Slocum and knew that defendant was "looking around" the Money Vault the morning of the burglary. Del Coma therefore had probable cause to arrest defendant for the burglary on August 25. That defendant was released without being booked after his first trip to the police station cannot render his subsequent arrest on September 13 invalid.

reasonably in going to defendant's home to execute the warrant; the search was incident to an arrest based on probable cause, and only items which reasonably appeared to be connected with the Money Vault burglary were seized. That some of such items were subsequently identified as coins and medals stolen from the Pulati residence in February 1965 does not invalidate the search which produced them. Hence the coins and other numismatic items which the prosecution introduced into evidence were admissible.

III

We do not find that any prejudice resulted to defendant even if the court committed error in failing to strike count II after the magistrate at the preliminary hearing dismissed that count for lack of evidence and held defendant to answer only on the burglary counts, I and III.[5]

The error, if any, involved failure to comply with the requirements of article I, section 8, of the California Constitution and section 739 of the Penal Code. A district attorney may, "after examination and commitment by a magistrate" (Cal. Const., art. I, § 8), file in the superior court an information charging an accused with an offense for which he has not been held to answer only if that offense was "shown by the evidence taken before the magistrate to have been committed" (Pen. Code, § 739) and "arose out of the transaction which was the basis for the commitment"

[5] The complaint charged defendant with three crimes: first degree burglary of the Pulati residence on February 2, 1965 (count I), concealing and withholding stolen property on September 14, 1965 (count II), and second degree burglary of the Money Vault on August 14, 1965 (count III). At the preliminary hearing, the magistrate dismissed count II for lack of evidence and held defendant to answer on counts I and III. Defendant was arraigned in the superior court in October 29, 1965, on an information charging all three counts. The court denied defendant's motion under Penal Code section 995 to dismiss count II. Defendant pleaded not guilty to all three counts. At the close of the evidence the trial court granted the prosecution's motion to dismiss count II. The jury found the defendant guilty on counts I and III.

on a related offense. (Parks v. Superior Court (1952) 38 Cal.2d 609, 614; People v. Warren (1958) 163 Cal.App.2d 136, 141.)

The facts of the instant case satisfy the second requirement that the offense arise out of the same transaction which serves as the basis of the commitment, since count II charged defendant with concealing and withholding, in violation of section 496 of the Penal Code, property stolen from the Pulatis; that property was the subject of the second burglary count on which defendant was held to answer. The only issue here, therefore, turns on whether "the evidence at the preliminary hearing [showed] probable cause for holding the [defendant] to stand trial on the charge of [violating section 496 of the Penal Code]." (Parks v. Superior Court, supra, 38 Cal.2d at 614.)

Although the committing magistrate found that "there is no evidence sufficient to hold the defendant to answer on count two," we need not pass upon the validity of this ruling. The trial court's error, if any, in declining to dismiss count II did not cause prejudice to defendant. (People v. Watson (1956) 46 Cal.2d 818, 836.) Although the entire information was read to the jury, the defendant does not allege that the prosecution in any way improperly took advantage of the inclusion of Count II in the information. The prosecution did not attempt to introduce any evidence that was not admissible under counts I or III. Since the prosecution moved, outside the presence of the jury, to dismiss count II at the close of the evidence, the trial court did not give any instructions relating to that count. In light of the overwhelming evidence of guilt, the mere reading of the information charging the second count to the jury cannot be deemed prejudicial.[6]

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[6] We need not decide whether three alleged instances of misconduct on the part of the prosecutor during his examination of certain witnesses, and the trial court's ruling relating to conclusions expressed by a fourth witness, constituted error. Even assuming error in all four alleged instances, their combined effect worked no prejudice in light of the overwhelming admissible evidence of guilt. (People v. Watson, supra, 46 Cal.2d at 836.)

To sum up the main issue of this case, we do not believe that the search, which occurred incident to an arrest based upon probable cause, should be invalidated solely because of reliance upon a defective arrest warrant. If we were to rule otherwise, we would not only prevent the introduction of entirely proper evidence but also discourage officers from first presenting to a magistrate the evidence upon which they could later rely in establishing probable cause to justify an arrest and incidental search and seizure. Officers would very likely eschew the warrant that could both fall of its own weight and bring down with it the structure of an otherwise impeccable search and seizure.

The judgement is affirmed.

Tobriner, J.

We Concur:

Traynor, C. J. Sullivan, J.

We Concur in the Judgment:

McComb, J. Mosk, J. Burke, J.

Crim. 11607

PEOPLE

v.

CHIMEL

DISSENTING OPINION BY PETERS, J.

I dissent.

In a well reasoned opinion we have held this very day that warrants identical to the ones used here are constitutionally defective, and that arrests pursuant thereto are invalid. (People v. Sesslin, 68 A.C. —.) The majority opinion concedes, as it must, that the warrants here are invalid because constitutionally defective. The arrests made pursuant to such warrants must, therefore, be held to be invalid.

The majority seek to uphold the arrests because, at the trial, the prosecution justified the arrests because the police had knowledge of sufficient facts to constitute probable cause. But the arrests were not based on that ground. The police purported to act solely upon the warrants. To permit them to justify the arrests at this late date on entirely different grounds unfairly prejudiced the defendant. He had the legal right to prepare and to base his defense on the invalidity of his arrest because of the constitutionally defective warrants. To compel him at the trial to meet a completely new justification for the arrests placed him at a serious disadvantage.

The police had the right to elect whether they should arrest defendant because they had probable cause to do so, or upon warrant. They elected the latter alternative. Having made the arrest in a constitutionally defective manner they are bound by their election. Any other holding makes the securing and issuance of a warrant idle acts.

I would reverse the judgment.

Peters, J.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1968

No. 252 Mis.

TED STEVEN CHIMEL, Petitioner,

v.

CALIFORNIA

On petition for writ of certiorari to the Supreme Court of the State of California.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 770 and placed on the summary calendar.

November 25, 1968.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

PETITION NOT PRINTED

No. 770

TED STEVEN CHIMEL,

Petitioner,

vs.

CALIFORNIA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

PETITIONER'S BRIEF

PETITION FOR CERTIORARI FILED MAY 16, 1968
CERTIORARI GRANTED NOVEMBER 25, 1968

KEITH C. MONROE
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Santa Ana, California 92706
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 770

TED STEVEN CHIMEL,

Petitioner,

vs.

CALIFORNIA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

PETITIONER'S BRIEF

Opinions Below

The opinion of the Court of Appeal, Fourth Appellate District (vacated by grant of hearing in State Supreme Court), is not officially reported, but is published in 61 Cal. Rptr. 714, *People* v. *Chimel,* August 30, 1967. The opinion of the California Supreme Court is reported in 68 C. 2d ——,* 67 Cal. Rptr. 421, April 10, 1968. The companion opinion of the California Supreme Court, *People* v. *Sesslin,* is reported in 68 C. 2d ——,** 67 Cal. Rptr. 409.

* 68 Adv. Cal. 448.

** 68 Adv. Cal. 431.

Jurisdiction

The judgment of the California Supreme Court was entered on April 10, 1968. The petition for a writ of certiorari was filed with this Court on May 16, 1968. The jurisdiction of this Court is invoked under 28 U. S. Code section 1257(3) on the ground that a right guaranteed to the petitioner by the United States Constitution has been infringed by the judgment of the lower court. The petition for a writ of certiorari was granted by order of this Court made on November 25, 1968.

Constitutional Provision Involved

Amendment Four to the United States Constitution:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U. S. C. A., Constitution, Amendments 1 to 5, p. 102.

Questions Presented

1. Does the Fourth Amendment state a general principle which requires antecedent justification before a magistrate of every search or seizure of person or property, subject only to judicially-created exceptions of necessity?

2. Is the constitutionally permissible scope of a warrantless arrest-based search equivalent to the permissible scope of a warrant-based search?

Statement of Facts

The Pulati home was burglarized on February 2, 1965. [28]* On that occasion defendant was absent from a meeting of a coin club which he had attended once a month for the preceding four months concurrently with the Pulatis. [33] Prior to that time, defendant had visited the Pulatis in their home to discuss coins generally with them and knew that they kept some coins there. [24] However, defendant had never been in the room from which the burglarized property, two drawers containing coins, was taken. [37-38]

On the night of August 14, 1965, the Money Vault, a coin shop, was burglarized. [96-97] On the afternoon preceding the Money Vault burglary the defendant stated to a neighbor that he was going to "knock over a coin shop." [247-48] On the day following, defendant stated to the same neighbor that he had broken through one wall of the shop but had not entered due to some black wires he encountered there. [250-51] Several weeks later, defendant stated to another coin dealer that he had been involved in the burglary of the Money Vault. [260-61] During this same period of time, the last half of August, defendant took part in a conference at the Orange Police station which was attended by defendant, one Charles Hamburger, attorney Everett Jones (representing Hamburger), and two officers of the Orange Police Department. [360, 376] This conference centered around the possibility of return-

* Bracketed numbers refer to pages of Reporter's Transcript.

ing the stolen coins in consideration of a civil release. [368] The defendant claimed that Slocum, the owner of the Money Vault, published the extent of his loss over the coin circuit teletype and was, at the conference, claiming a greater loss than he had published. [373] Thereafter, some of the stolen coins were seized from Attorney Jones' office. [376] Hamburger was never arrested. [378]

Shortly prior to that conference, and on August 25, the investigating officer, Del Coma, had arrested defendant on the street without a warrant, based on probable cause to believe that defendant was implicated in the burglary of the Money Vault. [356-57, Op. Cal. S. Ct., p. 9, fn. 4]* After some questioning at the police station, defendant was released without being charged.

Officer Del Coma obtained a warrant for the arrest of defendant on September 13 at 10:39 a. m. [325] This warrant was issued solely on the basis of a complaint which had been filed in the Municipal Court, charging one crime only, the burglary of the Money Vault. [269, 558] The complaint is, in relevant part, set out in the footnote.[1]

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* 68 Adv. Cal. at 454; —— Cal. Rptr. at ——.

[1] The complaint, as set forth in the opinion of the Court of Appeal, recited:

"Personally appeared before me this 13th day of September, 1965 T. DEL COMA who, after being first duly sworn, deposes and says:

"That on or about the 14th day of August, 1965, at and within Orange County, California, the crime of Felony, to-wit: Violation of Section 459 of the Penal Code was committed by Ted Steven Chimel who at the time and place last aforesaid, did then and there willfully, feloniously and burglariously enter a building known as The Money Vault, located at 153 North Glassell Street, Orange, in said County and State, with intent to commit theft.

(*footnote continued on next page*)

The officer, at the time of receiving the warrant, knew where defendant lived, knew where he worked, knew his telephone number and knew his hours of employment. [326, 370-71] Instead of executing the warrant upon its receipt according to its command, "forthwith to arrest the . . . defendant," the officer waited until after 4:00 p. m., at which time he went, in company with two other officers, to defendant's home, knowing that defendant was not there at that time. Having gained admission, the officers waited for defendant to come home from his employment. After a short time, defendant entered the residence carrying his lunch bucket, whereupon Officer Del Coma placed him under arrest on the authority of the warrant. [270-71]

Over defendant's protest, and purporting to act on the authority of the arrest warrant, the officer commenced a search of defendant's home. The search covered each bedroom, the sewing room, the living room, the kitchen, the attic, the bathroom and the garage. [274, 317-20] Drawers, boxes, cabinets, closets, suitcases and all portions of the premises not open to view were searched. [273, 329-30] This was a general search and was for nothing specific. [316, 323, 330] No evidence was offered to show that the

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"All of which is contrary to the form, force and effect of the Statute in such cases made and provided and against the peace and dignity of the people of the State of California.

"Wherefore, said complainant prays that a warrant may be issued for the arrest of said Ted Steven Chimel and that he be dealt with according to law."

The warrant which was issued on the basis of this complaint was conceded by the respondent and held by the Court of Appeal and the California Supreme Court to be constitutionally defective on the authority of *Giordenello* v. *United States,* 357 U. S. 480 (1958); *Aguilar* v. *Texas,* 378 U. S. 108 (1964) and *Barnes* v. *Texas,* 380 U. S. 253 (1965). That portion of the lower courts' holding is not in issue here.

officers had knowledge that any particular property was likely to be found in defendant's residence. At the time of this search, the premises were in the joint possession of defendant, his wife, and their small child. [270]

No evidence was offered to show that anything other than coins had been reported missing from the Money Vault. [105-09, 124-25] Nevertheless, during this search Del Coma seized a sizable collection of other items such as boxes, medals, razor blades, tokens, and coin wallets as well as seizing numerous coins.

A day or two later the Pulátis viewed the seized items and positively identified certain medals, boxes, tokens and coin wallets as those which were missing from their home following the February burglary. [276] The Pulatis were unable to positively identify any coins. [312, 384-403] No item seized was ever identified as having been taken from the Money Vault. [Op. Cal. Sup. Ct., p. 5]*

Following this viewing Officers Gallmeister and Merino of the Santa Ana Police Department filed a second complaint (in the same general form as the first complaint) charging defendant in two counts with burglary of the Pulati residence and with concealing and withholding stolen property.

Defendant in the meantime had been released on bail shortly after his arrest on the first warrant. Gallmeister and Merino therefore, solely on the basis of the second complaint, obtained a second warrant of arrest. The defendant was again, on September 16, arrested at his home on the authority of this warrant. Gallmeister and Merino,

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* 68 Adv. Cal. at 452; —— Cal. Rptr. at ——.

who had observed and aided Del Coma make the first arrest and search, this time searched the residence themselves with Del Coma observing. [318-22]

The fruit of the search of September 13, People's Exhibits 11 and 12, was admitted into evidence, over standing objection on Fourth Amendment grounds, at defendant's subsequent trial. [272, 279, 399-400; Cl. Tr. 65-73] The evidence seized was admitted on the basis that it had been legally seized under the authority of a valid felony arrest warrant. [272]

Summary of Argument

The Fourth Amendment, construed in the light of judicial history, was intended to require use of a valid search warrant as a condition to searching a man's home.

The cases decided by this Court which appear to make an exception to the search warrant requirement can be harmonized to show that the exception to the search warrant requirement, in the case of a home, is limited to situations where the officer has antecedently justified his right to arrest and has had additional information which would have justified issuance of a search warrant and has conducted the search in good faith.

On the facts of this case there were no exigent circumstances and no antecedent justification of any sort. In addition, the officer did not have information which would have justified issuance of a search warrant and there is a strong inference that the search was not conducted in good faith.

For those reasons, the search and the judgment founded thereupon is inconsistent with the Fourth Amendment and should be disapproved.

ARGUMENT

SECTION I

The Fourth Amendment, Viewed in Historical Perspective, Was Intended to Require Use of a Valid Search Warrant for Search of a Home.

This case presents, on uncontradicted evidence, the fundamental question of when, if ever, an officer will be required to antecedently justify his actions in searching a home incident to an arrest. This question necessarily involves the secondary question of what scope of search is permissible with and without antecedent justification. Although there are two questions posed, each is so intimately related to the other as to make separate consideration of them the more difficult approach. Therefore, the right to search and the permissible scope will be discussed concurrently.

The Fourth Amendment is:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

This Amendment, like the Constitution of which it is a part, states the principle in only the broadest terms, and leaves the mechanics of its application to the ingenuity of the Court and the legislature, thus leaving room for adapta-

tion to changing social conditions. For clarity, however, of the principle guaranteed by this Amendment, a brief glance at its ancestry and heritage may be helpful.

The recognized foundation of constitutional democracy is embodied in The Great Charter of King John, the *Magna Carta.* Several portions of that historic document are relevant to the case at bar:

> *Clause 38*: No Bailiff, for the future, shall put any man to his law, upon his own simple affirmation, without credible witnesses produced for that purpose.
>
> *Clause 39*: No freeman shall be seized, or imprisoned, or dispossessed, or outlawed, or in any way destroyed; nor will we condemn him, nor will we commit him to prison, excepting by the legal judgment of his peers, or by the laws of the land.[2]

Coke, in his reknowned Institutes, asserts flatly that searches of a man's home, even for stolen goods, were not permitted by *Magna Carta*:

> And yet it is to be underftood, that if one be indicted of felony, the fherif may be proceffe thereupon after denyall made, &c. break the houfe for his apprehenfion, or upon hue and cry of one that is flain or wounded, fo as he is in danger of death, or robbed, the kings officer that purfueth may (if denyall be made) break a houfe to apprehend the delinquent: but for juftices of peace to make warrants upon furmifes, for breaking the houfes of any fubjects to fearch for felons, or

[2] The material quoted and the clause numbers are from Stringham, *Magna Carta, Fountainhead of Freedom,* App. B, Law. Coop. Pub., 1966. The clauses in the original document were not numbered.

> stoln goods, is against Magna Carta, . . . and againft the ftatute of 42 E. 3. cap. 3. &c.

Coke, 4 Inst. 176 (ca. 1629), quoted from Clark & Sons ed., London, 1817.

Unfortunately, the footnote to the quoted material refers to "Mag. Car. c. 29" as authority for the statement. Presumably though, despite the difference in numbering which might have come about in translation, Coke had reference to Clause 39 as set forth above. Nevertheless, it would seem that Clause 38, when read together with 39, would also support the statement. But even in Coke's time, this prohibition against searches of the home appears to have been honored in not small measure by its breach. Thus in 4 Inst. 177, he states:

> For though commonly the Houfes or cottages of poore and bafe people be by fuch warrants fearched, &c. yet if it be lawfull, the houfes of any fubject, be he never fo great, may be fearched, &c. by fuch warrants upon bare furmifes.

From this it seems probable that during the 400 years of existence of the Great Charter at the time Coke wrote, there had been a process of erosion of what he took to be an absolute prohibition against searching a man's home to obtain that which will convict him. The practicalities of keeping the law had worked a quiet, but small, intrusion on its letter. That process is further made clear in the celebrated case of *Entick* v. *Carrington,* 19 How. St. Tr. 1029 (1765). In *Entick* the Secretary of State had issued a warrant to search Entick's home for allegedly libellous papers. Learning of the ransack under warrant, Entick

sued the King's messengers, Carrington and others, in the Court of Common Pleas for trespass. His case rested on the claim that the Secretary of State had no jurisdiction to issue a warrant to search anyone's home for evidence. Judgment for the plaintiff was affirmed per Lord Camden, C. J. In the course of his opinion, Lord Camden refers to Coke's statement above:

> Sir Edward Coke denied the lawfulness of granting warrants to search for stolen goods; 4 Inst. 176, 177, though now it prevails to be law, but in that case the justice and the informer must proceed with great caution. There must be an oath that the party has had his goods stolen, and has strong reason to believe they are concealed in such a place, but if the goods are not found there, he is a trespasser, . . .

[1558-1774] All E. R. Rep. 45.

Notably, Lord Camden does not directly dispute Coke's earlier views but merely asserts that "it *now* prevails to be the law" etc., thus suggesting that the then unlawful practice which Coke had mentioned had become, in the intervening 140 years, a recognized exception. And so it often is with the law, an abuse corrected, as by *Magna Carta,* is corrected with an excess of zeal which impels the pendulum to swing too far the other way. It remains then for the courts to shape and fashion from their day-in, day-out experience the exceptions and limitations which will more nearly accommodate the principle with the conflicting interests remaining.

But even with the exception Lord Camden acknowledged, one thing is transparently clear from the English cases: Any legal right to search a man's home was very, very

grudgingly given, and when given it was attended by the strictest safeguards to preclude any arbitrary rummaging through a man's private possessions. And having just fought a revolution based in part on the pernicious writs of assistance, it must be assumed that the framers of our own Constitution were fully familiar with the English law and had no intention of extending it an inch. See *Boyd* v. *United States,* 116 U. S. 616 (1885).

SECTION II

The Search in This Case Is the Equivalent of or Exceeds What Might Have Been Done Under a General Warrant.

At this point a striking comparison emerges. At one end of the spectrum, lies the *Magna Carta,* under which there is every reason to think a free man's home was set aside in unimpaired privacy to him. This was his castle and it was legally inviolate. At the other end of the spectrum lies the case at bar. No fact was ever presented to a magistrate to evidence that a crime had been committed. [68 C. 2d ——,* 439 P. 2d 335]. No fact was ever presented to a magistrate to evidence that this defendant had committed a crime. No fact ever was, and no fact could have been, presented to a magistrate to evidence that certain goods were likely to be found in defendant's home. (R. T. 316, 323, 330) The case at bar, for those reasons, under the holding of the California Supreme Court, in fact authorizes more than a writ of assistance would have. Chief Judge Learned Hand wrote of this in *United States* v. *Kirschenblatt,* 16 F. 2d 202, 203 (CCA 2d, 1926):

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* 68 Adv. Cal. 452.

> After arresting a man in his house, to rummage at will among his papers in search of whatever will convict him, appears to us to be indistinguishable from what might be done under a general warrant; indeed, the warrant would give more protection, for presumably it must be issued by a magistrate. True, by hypothesis the power would not exist, if the supposed offender were not found on the premises; but it is small consolation to know that one's papers are safe only so long as one is not at home.

Kirschenblatt probably now lacks vitality as an authority, but it seems to be impossible to chart a logical course which permits an escape from Hand's quoted argument.[3]

SECTION III

The Statement "No Warrant Is Required" for Search of a Home Is Erroneous and Is Not Supported by Authority.

But it is claimed to be a different problem which is presented by this case. It is said to be merely a search undertaken incident to a valid probable cause arrest. For that reason, there is no need to consider search warrants for the right to search the place of arrest when making a valid felony arrest is a "practice of ancient origin" [*Harris* v. *United States*, 331 U. S. 145 (1946)] and "is not to be

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[3] As an aside, the California court has now decided that the offender need not even be home. Rather, it is sufficient that the officer "believe" he is at home, despite the fact of identification papers to the contrary. No reason whatsoever appears in the opinion for proceeding in the first place without a search warrant. *People* v. *Hill*, 69 C. 2d ——,* —— Cal. Rptr. —— (Nov. 13, 1968).

* 69 Adv. Cal. 568.

doubted." [*Agnello* v. *United States*, 269 U. S. 20, 30 (1925)][4]

What of this ancient right that is not to be doubted? Is it a legitimate part of our jurisprudence or is it a latter-day makeshift, spawned in error and nurtured in confusion? In *Entick*, Lord Camden states: "If this is law it would be found in our books, but no such law ever existed in this country." In *United States* v. *Rabinowitz*, 339 U. S. 56 (1949) the Court crystallized for the first time in a holding the proposition that in an otherwise reasonable search *"no warrant is required."* Is that statement supported by authorities preceding, and cited in, *Rabinowitz*? It seems appropriate at this point to pause for definition of terms.

Mr. Justice Holmes once aptly stated:

> As long as the matter to be considered is debated in artificial terms there is a danger of being led by a technical definition to apply a certain name, and then to deduce consequences which have no relation to the grounds on which the name was applied.

Guy v. *Donald*, 203 U. S. 399, 406 (1906).

Words, like photographs, serve their users only as they create an image in the mind of the reader. But unlike photographs, a given combination of words may produce as many different images as there are readers. For this reason it is imperative to communication of the discussion that follows that the elusive and skittish term "probable cause" be firmly bolted down on a common ground of meaning.

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[4] Despite its "ancient heritage," neither Coke nor Lord Camden seem to have heard of it.

"Probable cause" merely describes an evidenciary state. At its simplest it refers to a state of evidence upon which a reasonable belief in the truth of a given proposition may be founded. But it follows that the quantum and the type of evidence which will reasonably support belief will depend entirely upon the proposition which is questioned. Thus, discussion of "probable cause" standing alone lacks meaning. The term acquires meaning for practical application only if it is directed to a point of reference, "probable cause to believe A."

Generally, probable cause which will justify the arrest of a person consists of evidence from which a reasonable man would infer a) that the acts constituting each element of a given crime have been performed and b) that a given person committed those acts.

But it is well settled [*Camara* v. *Municipal Court*, 387 U. S. 523 (1967)] that probable cause which will justify issuance of a search warrant (in the case of a crime) requires an additional element: the evidence must indicate a) that a crime has been committed and b) that a given person committed it and c) that the described object of search is likely to be found in a given place. That this distinction has caused the state courts some difficulty is illustrated by the selected state cases set forth in Appendix A, *infra*, p. 33.

To avoid any confusion as to meaning, the term "probable cause" will not be used. Rather, the phrase "cause for arrest" will be used to refer to the evidenciary state required for issuance of an arrest warrant and "cause for search" will be used to refer to the evidenciary state required for issuance of a search warrant. For convenience, since it is not in issue, it will be assumed that evidence

sufficient to justify issuance of an arrest warrant would be sufficient to justify an arrest without warrant.

Returning then to *Rabinowitz*, *Weeks* v. *United States*, 232 U. S. 383 (1913) is cited for the proposition that the right to search the person incident to arrest has been recognized here and in England. This statement is undoubtedly correct and rests on the most compelling necessity: the officer's vital and immediate need to protect himself from the thrust of a hidden and unsuspected dagger. But this is no support for the proposition that no warrant is required for search of a man's home. So *Weeks* is not the book where the law is found.

The *Rabinowitz* Court then cites *Agnello* v. *United States*, *supra*, as authority for the statement here challenged. Although the statement certainly appears in the *Agnello* opinion (269 U. S. at 30), it was quite unnecessary to decision of the case and thus constitutes *obiter dictum*. That is to say, the *Agnello* opinion points out that the only search which was incident to an arrest took place at the Alba home and its legality was not challenged. As to the facts surrounding the search at the Alba home, the Court devotes four sentences:

> Upon the apparent consummation of the sale, the agents rushed in and arrested all the defendants. They found some of the packages on the table where the transaction took place, and found others in the pockets of Frank Agnello. All contained cocaine. On searching Alba, they found the money given him by Napolitano.

In addition to being dictum, it is clear that the facts stated do not support the conclusion reached. On the contrary, the facts portray a typical arrest of persons then com-

mitting a felony, a search of their persons and a seizure of contraband in open view. The facts do not even remotely suggest any search other than that of the persons arrested. *Agnello* then is not the book where the law is found.

Both *Rabinowitz* and *Agnello* cite *Carroll* v. *United States,* 267 U. S. 132 (1924) as authority for the "right to search the place of arrest." But *Carroll* seems to be authority, if anything, for the proposition that a search warrant is an absolute requirement for the search of a home. In fact the *Carroll* Court devotes the better part of five pages of the opinion to an analysis of the applicable national prohibition statute and the legislative history thereof. The Court concludes from this analysis that Congress had made an implied statutory grant of power to search vehicles of transportation without a warrant. But at the same time, the analysis discloses an express statutory prohibition against searching any private dwelling without a search warrant. To do so was made a crime. 267 U. S. 146-47. *Carroll,* therefore, is not the book where the law is found.

Finally, *Rabinowitz* relies on *Marron* v. *United States,* 275 U. S. 192 (1927) as authority for the no-warrant rule. This is difficult to follow, for the officers in *Marron* in fact had a valid warrant which authorized search of that very place. In the course of the search, they came on a ledger which later materially aided the prosecution of the case. This ledger was not described in the search warrant. The *Marron* Court justified seizure and use of the ledger by a mild sprinkling of legal fiction, holding that this was an instrumentality by which the crime was committed. Having gotten that far with tongue in cheek, the Court had no difficulty in concluding that seizure of the ledger was

justified as a seizure of an instrumentality of crime made in the course of effecting a valid arrest.[5] So in the final analysis of *Marron,* recognizing the fiction employed as a valid device to serve legitimate Fourth Amendment ends, the case is not a search case at all but is instead a seizure case. Certainly, therefore, a case of legal search under valid search warrant cannot conceivably support the statement that "no warrant is required." In consequence, we have no books in which this law is found, "so it is sure that no such law ever existed in this country."

For the foregoing reasons, it is respectfully urged that the statement in *United States* v. *Rabinowitz* that in an otherwise reasonable search, a "warrant is not required" is erroneous. It is a derelict on the waters of the law and deserves once and for all time to be put to its final rest.

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[5] The error in citing *Marron* as authority for a warrantless search probably arises from considering a search and seizure as one act or transaction. Obviously, when viewed as two distinct acts, they are utterly different concepts. A search, of necessity, must precede any seizure, except as to items in open view, as in *Agnello.* And the threshold question in a search case is—was it legal to make a search at all? In *Marron* the search was perfectly legal. It had been antecedently justified by the issuance of a valid search warrant. For that reason the officers not only had the right, they were under a duty, to be where they were, doing what they were doing—searching. And where violation of a citizen's privacy is validly done under judicial warrant, it does no violence to the Fourth Amendment to permit seizure of evidence of the very crime for which the search is authorized, and which comes to light in the course of an otherwise legal search. The ends of the Fourth Amendment are fully served by requiring antecedent description of what is thought to be there without straitjacketing the seizure provision. The description requirement precludes the making of a general search under a specific warrant.

SECTION IV

The Test for Constitutional Validity of a Warrantless Search Enunciated in Rabinowitz Provides No Guidance for the Lower Courts.

The progression through 750 years of constitutional history under *Magna Carta* and under our own Constitution has shown that some right of search is required in the interest of effective law enforcement. The problem, however, is determination of the parameters of reasonable and necessary search which will, at the same time, be faithful to the express terms of the Fourth Amendment. In making such a determination, it is apparent that the standards set must be such as to permit their effective application by the various lower courts, who will in fact be applying them in day-to-day cases. *Rabinowitz* has failed of its purpose in that regard at least. On its facts, the case was a very limited and narrow holding which would probably not be objectionable had the decisions of the lower courts under it been limited to essentially similar fact situations. Unfortunately, as the case at bar and the cases in Appendix A rather vividly illustrate, there has been a clear tendency for lower courts to reason: "If we find 'cause to arrest', *ipso facto* we have found 'cause to search'."

The problematical *Rabinowitz* standard is:

> The relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable. That criterion depends upon the facts and circumstances—the total atmosphere of the case.

As a practical matter, most cases begin and end in a court of original jurisdiction, a Justice Court, a Municipal Court,

a County Court or a District Court. And by like token, the determination of "reasonableness" usually begins and ends within the broad "legal discretion" of the particular judge sitting in the court of original jurisdiction, necessarily subject to the totality of his prior experience, his predilections and his unrealized but humanly inescapable biases and prejudices. And as those human realities exist so must they express themselves in terms of results under a rule which asks—in fact requires—that a judge decide a constitutional issue by first considering the "total atmosphere of the case" and then determining whether it was "reasonable" in that atmosphere to search without a warrant. In a given case, would the same result be likely to obtain from a judge who had been appointed to the bench from 20 years as a prosecutor as would from a judge who had been appointed from 20 years as a public defender?

This Court's recognition of the problems inherent in and its dissatisfaction with vague and general expressions of constitutional standards is perhaps best illustrated by comparison of relevant quotations from some recent and some not-so-recent landmark cases dealing with the right to counsel, due process, confrontation of witnesses and admissibility of illegally obtained evidence. These quotations are set forth in Appendix B, *infra*, p. 39.

SECTION V

This Court's Cases Can Be Harmonized to Show That No Search Will Be Approved for Which a Search Warrant Could Not Have Been Obtained.

As noted in the petition for certiorari, this Court has, in several very recent cases, rather strongly suggested that the "warrant is not required" language of *Rabinowitz*, if it is the law at all, is to be accorded an extremely limited scope. See *Schmerber* v. *California*, 384 U. S. 757 (1966); *Camara* v. *Municipal Court*, 387 U. S. 523 (1967) and *Katz* v. *United States*, 389 U. S. 347 (1967). As a corollary, the Court has indicated its intention to favor the use of search warrants by avoiding hypertechnical interpretation of the underlying affidavit:

> A grudging or negative attitude by reviewing courts toward warrants will tend to discourage police officers from submitting their evidence to a judicial officer before acting . . . . [therefore] the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants.

United States v. *Ventresca*, 380 U. S. 102, 108-09 (1965).

However, the direct suggestion in *Ventresca* does not appear, in the light of this Court's earlier cases, to be an innovation which first saw light in that case. Rather, there is substantial evidence to support the notion that the language in that case merely expresses a premise which this Court has applied over many years but which has been limited in its direct expression to the factual result of the cases decided.

The method suggested by Professor Goodhart[6] will be utilized here to demonstrate the principle which seems to be reflected in the results of the cases.

The first group of cases, while representative, are not applicable to the facts of the case at bar, and so will be limited in number. In this first group are the "exigent circumstances" cases. They involve on their facts an arrest, a contemporaneous or subsequent search, or in one case even a prior search, and operative facts which show that obtaining a search warrant would have posed serious questions as to apprehension of the defendant, destruction of evidence, danger to persons, etc. In each case in this group there is a stated factual basis for immediacy. Cases in this class have almost uniformly met with this Court's approval of the search involved. See, for example, *Warden* v. *Hayden*, 387 U. S. 294 (1967); *Schmerber* v. *California, supra; Brinegar* v. *United States*, 338 U. S. 160 (1948) and *Carroll* v. *United States*, 267 U. S. 132 (1924).[7]

The second group of cases are those in which there was no stated evidence of exigent circumstances, but there was

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[6] Lecture given at the University of London in 1930, Arthur L. Goodhart, *Determining the Ratio Decidendi of a Case*, published in Jurisprudence in Action, Baker, Voorhis, New York, 1953, p. 193 et seq. Goodhart looks, in search of the rationale, to the operative factual result of the decision viewed in light of the facts of the case which the court found to be material. The analysis made here will extend this theory to a line of cases on the assumption that if a series of similar operative results follow from facts common to all cases considered, the principle rests in the common facts.

[7] *Ker* v. *California*, 374 U. S. 23 (1963) might also be included in this group since there was reliance by the majority on the exigent circumstance exception. 374 U. S. 61 (dissenting opinion). It is preferred, however, to treat *Ker* in Appendix A, *infra*, p. 37, since the substantive authority of the case may be open to question.

at some point an arrest, a search which extended much beyond the person of the arrestee, all conducted without *any* warrant, and all disapproved on review. While several of these cases involve searches which were, on their facts, too remote in time or distance to be judged "incidental", all were suggested to be searches made as an "incident to a valid arrest."[8] These cases are: *Katz* v. *United States, supra; Stoner* v. *California,* 376 U. S. 483 (1964); *Jones* v. *United States,* 357 U. S. 493 (1958); *Miller* v. *United States,* 357 U. S. 301 (1958); *McDonald* v. *United States,* 335 U. S. 451 (1948); *Johnson* v. *United States,* 333 U. S. 10 (1947); *Trupiano* v. *United States,* 334 U. S. 699 (1947); *Go-Bart Importing Co.* v. *United States,* 282 U. S. 344 (1930) and the dean of the search cases, *Weeks* v. *United States,* 232 U. S. 383 (1913).

Finally, the last group of cases involve an arrest, a related search and the discovery of damning evidence. But each case in this group has been founded on use, by the

[8] *Preston* v. *United States,* 376 U. S. 364 (1964), decided by a unanimous Court, is instructive as to what is not an "incidental" search. See also *Taylor* v. *United States,* 286 U. S. 1 (1931) and *Amos* v. *United States,* 255 U. S. 313 (1920) for similar holdings. Some question may be raised as to the utility, as a communication device, of the concept of a search being "too remote", or the affirmative, that a search may be permissible because it is contemporaneous with an arrest as to time and place. This terminology would appear to obscure with an easily applied, and equally easily mis-applied, label the two questions which are always raised in a search case: Can any search be made consistent with the Fourth Amendment, and if so, within what permissible scope? Since the purpose of the Fourth Amendment's prohibition against unreasonable searches must rest on concern for protection of the citizen's privacy from arbitrary governmental invasion, a completely intangible concept, serious doubt exists as to the practicability, if not the impossibility, of honoring such an intangible concept by means of a mechanical time and distance formula. Nevertheless, the rule, despite its shortcomings, does have the virtue of administrative simplicity in those cases to which it applies.

searching officer, of a *valid warrant,* either for arrest or search. Thus, these are the "antecedent justification" cases. The cases in this group, with one exception which will be discussed, have uniformly met with this Court's approval as to legality of the search. The cases are: *United States* v. *Ventresca,* 380 U. S. 102 (1965); *Rugendorf* v. *United States,* 376 U. S. 528 (1964); *Jones* v. *United States,* 362 U. S. 257 (1960); *Abel* v. *United States,* 362 U. S. 217 (1960); *United States* v. *Rabinowitz, supra; Harris* v. *United States,* 331 U. S. 145 (1946); *United States* v. *Lefkowitz,* 285 U. S. 452 (1931); and *Marron* v. *United States,* 275 U. S. 192 (1927).*

Lefkowitz, of course, is the maverick in the last group of cases for there was a valid arrest warrant but the search was nevertheless disapproved. However, a careful review of the facts of *Rabinowitz* and *Harris* suggests that there is a valid factual distinction which harmonizes *Lefkowitz* with this group.

Rabinowitz devotes most of two pages of the opinion to a detailed statement of the facts known to the officer at the time of search. 339 U. S. 57-58. The Court made a specific finding that the search was neither general nor exploratory. 339 U. S. 62. The facts known to the officer as stated by the Court doubtless would have been sufficient to have authorized issuance of a search warrant. Thus, on the facts the search could have been conducted under a valid warrant. Therefore, the departure permitted by *Rabinowitz,* without minimizing it, was a technical departure.

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* Neither *Stanford* v. *Texas,* 379 U. S. 476 (1965) nor *Aguilar* v. *Texas,* 378 U. S. 108 (1964) appear in the foregoing group for the reason that the warrants used in those cases were specifically held to be invalid. The justification for those searches, though antecedent, was legally insufficient.

The same is true of *Harris* on the material facts stated by the Court. There was a specific finding that the search was neither general nor exploratory. 331 U. S. 153. The search was directed to discovery of two cancelled $10,000.00 checks and was found by this Court to have been in good faith so conducted. Presumably, the finding of specificity was sufficient to infer that the information known to the arresting officers would have been sufficient to have authorized issuance of a search warrant for the checks. So, the departure permitted by *Harris* is similarly a technical departure.

In contrast with that situation, the *Lefkowitz* opinion specifically finds that the search was both general and exploratory. No warrant could have issued for a general and exploratory search.[10] Therefore, *Lefkowitz* does not appear, on its material facts, to be inconsistent with the other cited cases.[11]

From the foregoing groups of cases, several rules of general application which have in fact been applied over the years can be discerned:

1. *The Exigent Circumstance Rule*: An arrest upon "cause to arrest", without antecedent justification, will justify a search similar in scope to that which might be

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[10] *Lefkowitz* is also troubled with the "mere evidence" rule, and that may be the basis of decision. The teaching is the same: That which could not have been done under warrant will not be countenanced "incident to arrest."

[11] *Kremen* v. *United States*, 353 U. S. 346 (1957) has been omitted from this group because of the exceptional facts on which it rests. Under a valid warrant, the officers seized and removed to their office, 200 miles distant, the entire contents of a house. The inventory of goods seized occupies 11 pages of an appendix to the opinion.

made under a valid search warrant, if there are proven facts which support a finding of exigent circumstances.

2. *The Plain View Rule*: An arrest upon "cause to arrest", without antecedent justification, will justify only a search of the person of the arrestee and seizure of instrumentalities, contraband or evidence which is in plain view at the place of arrest.

3. *The Antecedent Justification Rule*: An arrest upon a valid arrest warrant, supported by antecedent justification, will justify a search similar in scope to that which might be made under a valid search warrant, if there are proven facts which support a finding that the officer had information which would have authorized issuance of a search warrant and that he acted in good faith in conduct of the search.

The foregoing rules, which appear to articulate what this Court has in fact done over the years, do not, with the possible exception of the third rule, do violence to the Fourth Amendment. The first merely states a proposition which is rooted in necessity and relies for its vitality in proof of a valid reason for immediacy. Since evidence and proof of a legitimate need for haste involves a relatively objective consideration, as opposed to proof of "reasonableness", this exception does not seem to have been particularly troublesome. The Congress has impliedly approved this rule. *Carroll* v. *United States, supra.*

The second rule illustrates an exception which has a very lengthy legal title and which is founded on the most compelling necessity as to search of the person.[12] As to

[12] For what it may reveal, a careful reading of the record in this case fails to reveal any evidence that the primary search, of the defendant's person, was ever made.

the second part of this rule, seizure of things in plain view, it is merely an expression of the "officer need not be blinded" language which is well supported in logic and in the cases. See *Marron, supra,* p. 18, fn. 5.

The third rule has led to some rather significant difficulties and is somewhat troublesome from a logical point of view. The exception is probably founded on the understandable reluctance of this Court, or any other court for that matter, to invalidate a search and liberate a proven criminal when indeed the factual situation has been shown to be consistent with the Fourth Amendment and there has been only a failure to comply with the strict letter of the law. Primarily this rule raises an evidenciary problem. The validity of the search will, in almost every case, turn on the probity of the testimony later given by the searching officer, limited only by the record which supports the arrest warrant. But no matter the probity of the officer one way or the other, and assuming the officer's later testimony is not in any way influenced by what the search reveals (an assumption contrary to human experience), this rule would seem to be undesirable for law enforcement. It assumes that the officer in fact has had time and has had opportunity and has in fact obtained a valid arrest warrant from a magistrate. For that reason, it is impossible to say that any burden whatsoever would have been imposed to have obtained the correct process, a search warrant. So, under those conditions, to proceed with merely an arrest warrant exposes the officer to possible invalidation of the search without even any additional convenience to him. The only benefit to the officer under this rule would arise when he did not have "cause to search" and, at least on the assumptions made, that search would ultimately fail anyhow. Perhaps, though, this rule was intended to be an extremely

narrow exception which would see very little application from day to day due to the difficulties noted. *Rabinowitz* supports this view. Unfortunately, as this case and those briefed in Appendix A, *infra*, p. 39, illustrate, the rule has received the broadest possible application by literally mangling into its protective confines cases which have not the vaguest factual resemblance to the basis for the rule.

Finally, these rules, if they are validly deduced, necessarily preclude by their reference to search warrants any search which is general or exploratory. In addition, they militate against the arrest which is "manuevered" so as to take place on premises which the officer may desire to search. "Manuevering" clearly is inconsistent with proceeding under a "good faith" exception. Having examined the law generally, the facts of the case at bar will now be examined with reference to this law.

SECTION VI

The Rules Enunciated by This Court, as Applied to the Facts of This Case, Require Reversal of the Lower Court's Judgment.

Officer Del Coma did, on September 13, 1965, have facts known to him which constituted "cause for arrest" of the defendant for burglary of the Money Vault. [R. T. 96-97, 247-48, 250-51, 260-61] There were no "exigent circumstances." [Resp. to Pet. for Cert., p. 11] The officer did not antecedently justify his right to arrest the defendant. [R. T. 558; p. 4, *supra*, fn. 1] The officer did not have information which would have constituted "cause for search." [R. T. 316, 323, 330] The officer, inferably, "manuevered" the arrest of defendant so as to make defendant's home the

place of arrest. [R. T. 271] Substantiation of "manuevering" is found in the officer's earlier warrantless arrest of defendant on the street [Op. Cal. Sup. Ct. p. 9*] and the fact of two identical searches of defendant's home conducted by the same officers within three days of one another. [R. T. 271, 318].

The fundamental point raised by these facts is that if the officer had applied for a search warrant prior to the search of September 13, one could not have been issued consistent with the Fourth Amendment. For that reason, affirmance of this case would irresistibly lead to the conclusion that an officer's right to search a man's home is greater without a search warrant and without antecedent justification than it is with those protections. Resolutely, the foregoing conclusion, once reached, compels the further conclusion that search warrants should not in any case be used. This conclusion is equivalent to repeal of the Fourth Amendment. No Court can do that. Therefore, this case must be reversed.

If the inference of "manuevering" the place of arrest is validly reached, this, in effect, is using the arrest as a pretext to search. For that reason alone the case should be reversed.

As a third ground, the failure of the officer to antecedently justify either the arrest or search is reason, standing alone, for reversal under this Court's cases. But since it will probably be argued by the respondent that the officer in good faith believed, under procedure which had obtained for at least 74 years in California, that no antecedent justification was necessary, that point deserves ex-

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* 68 Adv. Cal. at 454.

amination. If the question before the Court was goodness or badness of the officer, this contention would be meaningful. But that is not the question before the Court. The clear purpose of the Fourth Amendment is to protect with a constitutional mantle the right of the people to privacy of their "persons, houses, papers and effects." It matters not that an officer in good faith may have thought this inapplicable, the right of privacy is as surely violated. "[No] Warrants shall issue, but upon probable cause, supported by Oath or affirmation . . . " The Constitution was not obeyed.

But even the claim of good faith on the officer's part rings a warning bell of grave doubt. He knew that no factual statement would be required for an arrest warrant. He had no reluctance in the same case, on the same facts, to make an arrest without warrant. His statement that defendant's home was chosen as the place of arrest so as "not to cause him any problem" at work is a pill that is hard to swallow as sworn truth. [R. T. 271] Out of concern for the defendant's well-being, it is concluded that it is more desirable to be carted off to jail before the eyes of a wife and young child after ransacking their house than from the presence of co-workers. Why was the officer so mule-like in his reluctance to admit to any connection with the second search even though he was right there while it was in progress? [R. T. 321-22]

Finally, a word should be said as to prejudice. The respondent has indicated its intention to argue that the error in this case, if any, was non-prejudicial beyond a reasonable doubt. The evidence which was seized in the search of September 13 filled two airline-type handbags. It comprised hundreds of coins and medals, as well as numerous

other items. Some of these medals were positively identified by Mrs. Pulati. The only other tangible evidence introduced against defendant was a trade dollar which was not positively identified. [R. T. 436] Mr. Shapiro, the prosecution's witness, testified that there was a "reasonable possibility" that it was not the same trade dollar. Beyond that "reasonable possibility" the evidence upon which defendant was convicted was wholly circumstantial. It seems almost facetious on those facts to suggest that a finding of "non-prejudicial beyond a reasonable doubt" could be considered. *Chapman* v. *California*, 386 U. S. 18 (1967).

Conclusion

Based on the foregoing arguments and authorities, petitioner respectfully requests that the judgment of the Supreme Court of the State of California be reversed and the case remanded for a new trial.

KEITH C. MONROE
Attorney for Petitioner

APPENDICES

APPENDIX A

[Petitioner and his counsel are indebted to Anthony Alperin, Robert Cooper and Lawrence F. Nelson, Jr., all of whom are members of the first-year class, The Law School, University of California at Los Angeles, each of whom contributed his vacation time without compensation to research of the matters set forth in this Appendix.]

That the problem in the case at bar is widespread in the state court cases is perhaps most easily shown by a selective sampling of cases from several recent state appellate decisions. The opinions do not indicate the existence of exigent circumstances and in each case a search, without warrant, was made of private property. Even though each of these cases must rely on *Rabinowitz* or *Harris* for constitutional authority, and several cite either or both, in none of them is the failure to get a search warrant discussed as a factor in determining whether or not the search was "reasonable."

In *Jackson* v. *State,* 29 Wis. 2d 225, 138 N. W. 2d 260 (1965) the police were informed of narcotics activity at defendant's apartment. Officers went to the apartment and by peeking in a window saw defendant (a parolee) in the company of Edwards, an ex-convict. In the related case, *Edwards* v. *State,* 38 Wis. 2d 332, 156 N. W. 2d 397 (1968) the court suggests that the officers had neither "cause to arrest" nor "cause to search" at that point except for aiding a parole violation [W. S. A. 946.46], a misdemeanor, on the part of Edwards. Edwards was arrested at the door and the apartment searched thoroughly, disclosing hidden narcotics. The Court stated: "Under these circumstances 'probable cause to arrest' also supports a determination of probable cause to believe that evidence and instrumentalities of the crime are within the immediate con-

trol of the person arrested [based on] General police experience . . . "

The effect of this holding is to sanction, on the basis of an observed misdemeanor, the search of an entire residence without antecedent justification and where no further evidence of the misdemeanor could possibly have been found.

A case more verbal in its elimination of a search warrant as a consideration is *Stearsman* v. *State*, 237 Ind. 149, 143 N. E. 2d 81 (1957). In that case the defendants had been under surveillance for at least two days. Four officers went to one defendant's home without warrant of any kind. They entered without consent, arrested the defendant and searched for and seized certain stolen property. Regarding the appellant's motion to suppress the evidence seized in that search, the Court says: *"The sole question thus presented* is whether or not Sergeant Akeman . . . had probable cause to believe that a felony had been committed, and that appellants had committed such felony." (emphasis added)

Thus, Indiana flatly equates the probable cause required for arrest with the probable cause which would support issuance of a search warrant. This case, although decided in 1957, cites *Harris* as authority and purports to apply a Federal standard in evaluating the search.

Illinois apparently also considers only the question of probable cause to arrest and once found validates a search *in or around* the premises of arrest. In *People* v. *Braden*, 34 Ill. 2d 516, 216 N. E. 2d 808 (1966) a man named Conn entered defendant's apartment and left within a few minutes. Upon his departure he delivered narcotics to a third party, whereupon the officers solicited his assistance in gaining admittance to the apartment. Conn, accompanied by officers, returned to the apartment and again was admitted. The offi-

cers followed, forced admittance, arrested defendant, searched the apartment *and a refrigerator and closet outside the apartment.* The Court states: "The controlling question [as to reasonableness of the search] is whether a reasonable and prudent man . . . would have believed that the crime of unlawfully selling narcotics had taken place and that the defendant was guilty of the crime."

The Illinois Court's holding could well be restated to say that probable cause to arrest automatically authorizes search of a home since "no warrant is required."

New Jersey has gone even a step further in *State* v. *Miller,* 47 N. J. 223, 220 A. 2d 409 (1966). In that case Ronald Miller, a parolee, informed police that one Bynum was in his apartment, probably armed, and Miller did not wish to become involved with him. The police, who had an outstanding arrest warrant for Bynum based on a shooting, went to the Miller apartment. Bynum and Miller's brother were there. After arresting Bynum and physically restraining both men, the police made a careful search of the apartment. In a closet concealed narcotics were found. Miller's brother was prosecuted. The search was held to be incidental to the arrest of Bynum, even though he was conceded to be a visitor there.

So it appears that New Jersey has expanded the "area under the control" of an arrestee to include another person's residence which an arrestee is visiting. This concept would seem to have almost unlimited utility for an imaginative policeman. The quotation from Judge Hand, *supra,* pp. 12-13, would then have to read: "[O]ne's papers [and privacy] are safe only so long as one is not at home [and has no visitors]."

Pennsylvania has produced an amazing case. In *Commonwealth* v. *Cockfield,* 411 Pa. 71, 190 A. 2d 898, cert. den. 375 U. S. 920 (1963) police sought an arson

murder suspect. It is very doubtful that "cause to arrest" existed. Defendant's car, parked on the street, was placed under surveillance. After several fruitless hours, the trunk of the car was searched, revealing a recently used gasoline can and some paper which was charred at the edges. The car was then towed to the street in front of police headquarters and disabled. Cockfield somehow regained possession of it. He was arrested the day after the crime. There is no indication that the car was ever seized under court process. But two days after his arrest the car was again searched without warrant and the charred paper and the gas can were seized and ultimately were used in evidence at his trial. The Pennsylvania Supreme Court held that the second search, made two days after the arrest and without any lawful impound of the car, was incidental to the arrest. For some amazing reason, the first search of the car was not challenged.

Therefore, in Pennsylvania a search incident to arrest involves extremely flexible concepts of both time and distance as perhaps the necessities of the case may require.

Connecticut considers the search of a residence without warrant incident to arrest to be well settled. In *State* v. *Davis*, 24 Conn. Sup. 22, 186 A. 2d 383 (1962) the defendant erred in making a sale of liquor to an officer without going through the formality of being licensed to do so. The officers returned shortly afterward, arrested defendant (apparently a little old lady bootlegger) and searched her entire house. The State Supreme Court wrote: "It is well settled . . . that the house of one arrested may be searched as an incident to a lawful arrest therein . . . "

Since neither *Harris* nor *Rabinowitz* made any statement approaching the breadth of that made by the Connecticut court, the question naturally arises as to what constitutional source, if any, supports such a "well settled" rule.

Is it perhaps a well settled rule that contravenes the Fourth Amendment to the United States Constitution?

> Finally New York has a most remarkable case which is probably not highly persuasive authority since it is the decision of a County Court, but it appears nevertheless to stand unchallenged. This is the case of *People* v. *Olszowy*, 47 Misc. 2d 859, 263 N. Y. S. 2d 221 (Erie Co. 1965). A rape victim complained to police and an arrest warrant issued. The officers and the victim went to defendant's apartment and entered to execute the warrant. A cursory search showed that defendant was not present. Therefore, the officers proceeded with the help of the victim to search for and discover evidence in the apartment. On defendant's motion to suppress this evidence the Court held it to be admissible on the ground that it had been seized incident to a *lawfully attempted arrest.*

Does anything remain of the Fourth Amendment when a search which obviously could just as well have been made under search warrant and which did not and could not involve an arrest is nevertheless granted the judicial stamp of approval?

The purpose of this abbreviated summary of state court cases is to illustrate the cancer-like growth which has overtaken the very narrow and very limited facts on which the *Rabinowitz* case rested. Nevertheless, it may be suggested that *Ker* v. *California*, 374 U. S. 23 (1963) has had the effect of validating at least that much of a search without warrant as is involved in a surreptitious or forced entry for the purpose of arrest.

Whether or not *Ker* may have had this effect, it would appear that the substantive holding of the case has been seriously undermined if not disapproved *sub silentio*. Of course it is recalled that the Court was split in several ways on the *Ker* decision. Four votes were for affirmance on the grounds expressed in Part II of the opinion that a) state law permitted unannounced entry to arrest where

there was a possibility of destruction of evidence, and b) the state court's finding of exigent circumstances was supported by the evidence, and c) the federal rule requiring notice of identity and purpose to arrest was not of constitutional origin. The fifth vote for affirmance was cast by Mr. Justice Harlan on the ground that the Fourth Amendment was not directly applicable to state court proceedings.

Ker, if decided today, would almost surely reach the contrary result. a) State law no longer permits unannounced entry to arrest absent substantial evidence to support a finding of danger of destruction of evidence, danger of flight, etc. *People* v. *Rosales*, 68 C. 2d ——,* —— Cal. Rptr. —— (1968). b) The state court's finding of exigent circumstances made in *Ker* would probably not be supportable under the *Rosales* case. c) It has been very recently suggested by this Court that the federal rule requiring announcement of identity and purpose prior to forcing entry to arrest is a rule of constitutional origin. *Sabbath* v. *United States*, —— U. S. ——, 20 L. Ed. 2d 828, 834, fn. 8 (1968). Of course it follows that if the rule is of constitutional origin, it is applicable to the states. Therefore, at least two of the three bases for the substantive holding in *Ker* have been discarded.

If *Ker* is not substantive authority for the cases cited, then they must rest their constitutional validity on *Rabinowitz-Harris*. Such reliance, however, is ill-placed, for a statement that "the house of one arrested may be searched as an incident to a lawful arrest therein" without qualification is simply not supported by either decision. But even more importantly, such a statement has the effect of deleting from the Constitution the words, "and particularly describing the place to be searched, and the persons or things to be seized." No court has such a power.

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* 68 Adv. Cal. 307.

APPENDIX B

RIGHT TO COUNSEL:

"Under these principles, state refusal of a request to engage counsel violates due process [only if it can be shown] that he is so prejudiced thereby as to infect his subsequent trial with an absence of 'that fundamental fairness essential to the very concept of justice.'" *Crooker* v. *California*, 357 U. S. 433, 439 (1958).

"An individual need not make a pre-interrogation request for a lawyer. While such request affirmatively secures his right to have one, his failure to ask for a lawyer does not constitute a waiver." *Miranda* v. *Arizona*, 384 U. S. 436, 470 (1966).

DUE PROCESS:

"'[As to due process] It is sufficient to say that there are certain immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard.'" [Then holding that comment on failure of accused to testify does not violate due process.] *Twining* v. *New Jersey*, 211 U. S. 78, 102 (1908).

"We . . . hold that the Fifth Amendment, in its direct application to the Federal Government, and in its bearing on the States by reason of the Fourteenth Amendment, forbids either comment by the prosecution on the accused's silence or instructions by the Court that such silence is evidence of guilt." *Griffin* v. *California*, 380 U. S. 609, 615 (1965).

CONFRONTATION OF WITNESSES:

"Its admission [the deposition of an absent witness] was but a slight extension of the rule of the common law, even as contended for by counsel. The extension

is not of such fundamental character as to deprive the accused of due process of law." *West* v. *Louisiana,* 194 U. S. 258, 263 (1904).

"For me this state judgment must be reversed because a right of confrontation is 'implicit in the concept of ordered liberty [citing cases], reflected in the Due Process Clause of the Fourteenth Amendment independently of the Sixth." *Pointer* v. *Texas,* 380 U. S. 400, 408 (1965) (Mr. Justice Harlan concurring).

ILLEGALLY SEIZED EVIDENCE:

"[Although] the security of one's privacy against arbitrary intrusion by the police" is " 'implicit in the concept of ordered liberty' " it will not be imposed on the States "as an essential ingredient of that right." *Wolf* v. *Colorado,* 338 U. S. 25, 27-29 (1949).

"Today we once again examine *Wolf's* constitutional documentation of the right to privacy free from unreasonable state intrusion, and, after its dozen years on the books, are led by it to close the only courtroom door remaining open to evidence secured by official lawlessness in flagrant abuse of that basic right, reserved to all persons as a specific guarantee against that very same unlawful conduct. We hold that all evidence obtained in violation of the Constitution is, by that same authority, inadmissible in a state court." *Mapp* v. *Ohio,* 367 U. S. 643, 654-55 (1961).

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IN THE

Supreme Court of the United States

October Term 1968
No. 770

TED STEVEN CHIMEL,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

On Writ of Certiorari to the Supreme Court of the State of California

RESPONDENT'S BRIEF.

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IN THE

Supreme Court of the United States

October Term 1968
No. 770

TED STEVEN CHIMEL,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

RESPONDENT'S BRIEF.

Introduction

The sole matter on review before this Court in the present case is the validity of the determination by the California Supreme Court upholding the reception at petitioner's trial of evidence obtained as the result of a search and seizure conducted at petitioner's residence on September 13, 1965, by an officer who (1) had personally gathered information constituting probable cause for petitioner's arrest on a burglary charge, (2) had presented this information to the District Attorney's office which in turn had authorized the officer to seek an arrest warrant, (3) had obtained from a magistrate a warrant for petitioner's arrest, which warrant was ultimately held defective by the state courts, (4) executed the warrant at petitioner's residence, as soon as was possible, and (5) as an incident of the arrest searched the residence immediately following the ar-

rest for the fruits of the crime, thereby obtaining the evidence whose admission at trial is presently contested.

Some of the evidence seized during this search led to petitioner's arrest on a second, unrelated charge on September 16, 1965. On the latter occasion petitioner's residence was again searched, but the record does not indicate that any evidence was thereby obtained or used against petitioner at the trial.

Questions Presented

1. Was the search of the premises under petitioner's immediate control for the fruits of the crime, as an incident to petitioner's admittedly valid arrest upon probable cause, rendered unreasonable by the failure of the arresting officer to obtain a search warrant or an adequate warrant of arrest?

2. Was the search of the premises under petitioner's immediate control, as an incident to his admittedly valid arrest upon probable cause, rendered unreasonable by the fact that the scope of the search of petitioner's residence extended to areas beyond the room in which petitioner was arrested?

3. Was the search of the premises under petitioner's immediate control, as an incident to his admittedly valid arrest upon probable cause, rendered unreasonable by the fact that the warrant for petitioner's arrest was not executed until approximately six hours after it was issued because of (a) procedures customarily followed by the police department in executing warrants, (b) other burglary investigations occupying the time of the arresting officer, and (c) the desire of the arresting officer not to embarrass petitioner by arresting him at the latter's place of employment?

Statement of the Proceedings

In an information filed by the District Attorney of Orange County, petitioner was charged in Count I with the burglary of the residence of Mr. and Mrs. Vito Pulati located in the City of Santa Ana, a felony and violation of California Penal Code section 459, and in Count III with the burglary of a coin shop known as The Money Vault located in the City of Orange. (R. 1-2.) In Count II petitioner was charged with concealing and withholding the stolen property involved in the offense charged in Count I, a felony and violation of California Penal Code section 496. This latter count was ultimately dismissed. (R. 1, 374-75.)

Petitioner initially pleaded not guilty to Counts I, II, and III, then changed his plea to guilty to Count I, and subsequently again changed his plea to not guilty to Count I. (R. 4-6.)

After a jury trial in the Orange County Superior Court, petitioner was found guilty as charged in Counts I and III, the jury fixing the degree of the offenses at first degree burglary and second degree burglary respectively.[1] (R. 23-26.) Petitioner's motion for new trial was denied, as was his application for probation. Petitioner was sentenced to state prison on each of the two counts for the term prescribed by law, the sen-

[1]California law provides that burglaries of inhabited dwellings, trailer coaches, or of any building in the nighttime are of the first degree, as are burglaries involving offenders who arm themselves with a deadly weapon or commit an assault during the course of the burglary. At the time of the charged offenses, first degree burglary was punishable by imprisonment in state prison for five years to life. All other kinds of burglary are classified as of the second degree and as such were punishable by imprisonment in the county jail not exceeding one year or in state prison from one to fifteen years. Cal. Penal Code §§ 460, 461, 671.

tences to run concurrently in relation to each other and to any prior sentences. (R. 35, 37.)

Petitioner filed timely notice of appeal from the judgment of conviction (R. 35, 38), and the California Court of Appeal, Fourth Appellate District, Division Two, affirmed the judgment, *People v. Chimel,* unofficially reported in 254 A.C.A. 13 (1967) [61 Cal. Rptr. 714] (R. 390-401), and denied both parties' Petitions for Rehearing. 253 A.C.A. #4, Minutes, pp. 16, 17. The California Supreme Court granted both parties' Petitions for Hearing and on April 10, 1968, affirmed the judgment of conviction. *People v. Chimel,* 68 Cal. 2d 436 (1968) [439 P.2d 333] (R. 419-28.)

A. Evidence in Support of the September 13th Arrest and Search Involving the Burglary of The Money Vault.

The following evidence, most of which was also received at trial on the issue of petitioner's guilt of the offense charged in Count III (the burglary of the coin store known as The Money Vault), constituted the information known to Officer Thomas Del Coma of the City of Orange Police Department on September 13, 1965, when he obtained and executed a warrant for petitioner's arrest for the burglary of The Money Vault and, as an incident of the arrest, searched petitioner's residence and seized certain rare coins which appeared to him to have been stolen by petitioner in the course of the burglary in question. These coins were received in evidence at petitioner's trial over the objection of petitioner's counsel. (R. 202-03.)

On the night of August 14, 1965, Officer Del Coma responded to a burglary call at The Money Vault, which was located in the City of Orange. Officer Del Coma

had been on the force for six and a half years, almost four years of which were spent as a burglary detective. When he arrived at the coin store he observed various coins on the floor behind the counters. (R. 113-14, 201.) Entry appeared to have been through holes which had been made through two walls in the building. (R. 91, 93-94, 114-20, 245-47.) The alarm mechanism in the store included a trip wire across the front door and taping across the front windows. (R. 120-21, 171-72.)

Coins were missing from one of the showcases and from some shelves, but the contents of some showcases were undisturbed. Coins, in booklets, had been taken from the area beneath one of the showcases, the location where the most valuable items were kept. (R. 89, 91, 94-95.) Mr. B. R. Slocum, the owner of The Money Vault, definitely knew "what type of coins" had been located in this area. (R. 86, 152.)

After the burglary Mr. Slocum made an inventory of the missing coins, listing them as to value and "name and year and type and such," and made a claim to his insurance company. He was only insured in the amount of $10,000. The wholesale numismatic value of the missing coins was approximately $23,000. (R. 96-97, 132-34.) On the date of the burglary, Mr. Slocum had had between twenty thousand and thirty thousand individual coins in the shop for sale. (R. 112.) He was unable to state the exact number of coins that was missing after the burglary, but approximately one-third of his coins was taken. (R. 133, 145-46.) After the burglary, his inventory was between two and three thousand dollars. (R. 146-47.)

Mr. Slocum testified that he had known petitioner for several months prior to the date of the burglary. Petitioner visited Mr. Slocum and his wife once or twice a month. On one such occasion three or four months before the burglary, petitioner told Mr. Slocum "about some big deal he had, going to make him 50,000 or a hundred thousand dollars." Petitioner stated, " 'I have a group of guys coming out from the East to knock over a $50,000 collection in Fullerton. . . . We are hitting a doctor over in Fullerton for around 50 to 60,000.' " Mr. and Mrs. Slocum thought that petitioner was joking. (R. 97-99, 103.)

Petitioner inquired as to the amount for which Mr. Slocum had insured his coins. Mr. Slocum replied that he had had $50,000 worth of insurance but had just reduced the amount to $10,000; he was planning to save the cost of insurance premiums by placing much of his coin stock in a bank and thought that he would thereby avoid being robbed or burglarized. (R. 103.)

Petitioner then asked Mr. Slocum, " 'How would you like to have your place knocked off?' " (R. 103.)

Mr. Slocum replied, " 'Well, this is ridiculous, because I wouldn't reduce it from 50,000 to 10,000 if I wanted to have my place knocked off.' " When asked by petitioner what kind of alarm system there was in the store, Mr. Slocum told him that it was an Orco system. Mr. Slocum thought that "the whole thing was kind of a jester." (R. 103.)

On one occasion petitioner visited Mr. Slocum at the store and inquired about 20¢ pieces. Mr. Slocum showed him some of these coins and some other high-priced coins. Mr. Slocum had to get these coins from under-

neath one of the showcases, where he kept his "real good stuff" concealed beneath some empty coin albums so that it would not be taken in the event of a burglary. Mr. Slocum had intended to place these coins in a bank when he had the time. (R. 104, 182-83.)

Other than petitioner, Mr. and Mrs. Slocum, and the sister-in-law of Mr. Slocum, there was only one person, another customer, who had known the location where these valuable coins were kept. (R. 104.)

On the day preceding the burglary, Mr. Slocum was ill and his sister-in-law was tending the store. In her words, petitioner came into the store and "was just sitting there, looking around. . . . He didn't come in to buy coins or anything. He just was in there," remaining "quite a while." When she locked up the store that evening, she attached the alarm mechanism. (R. 87-88, 169-72.)

A few days after the burglary, Mr. Slocum received a telephone call at his home from petitioner. (R. 105.)

The conversation went as follows:

> Petitioner said, " 'I heard you got robbed.' "
>
> Mr. Slocum replied, " 'Yes, I did.' "
>
> Petitioner continued, " 'Well, I see you knocked your place over.' "
>
> Mr. Slocum inquired, " 'What are you talking about?' "
>
> Petitioner repeated his previous remark and said, " 'I see you knocked your own place over to collect the insurance money.' "
>
> Mr. Slocum stated that whoever had broken in had done "a very sloppy job."

Petitioner said in a stammering and excited voice that, " 'No,' " he had heard it was "real professional."

Mr. Slocum disagreed and, repeating that it was a "very bad job," asked petitioner, " 'Ted, did you do the job?' "

Petitioner replied, " 'Why, no. I didn't do it.' " (R. 105-06.)

On the night of The Money Vault burglary Thomas Ambrose, a neighbor of petitioner, had asked petitioner to accompany him on a bicycle ride, but petitioner had declined, stating that he had a "big deal cooking." When Mr. Ambrose inquired further, petitioner explained that he and another unnamed party "were going to knock over a place." Petitioner indicated that the deal involved a coin shop, that the shop was "all set," and that $60,000 might be involved. (R. 186-87.)

Mr. Ambrose attempted to dissuade petitioner from carrying out the plan, but petitioner showed Mr. Ambrose a Walkie-Talkie in his automobile and said, " 'We were going to use these to keep a lookout.' " Petitioner, speaking into the Walkie-Talkie, said: " 'Hello, Chuck. Come in, Chuck.' " Apparently there was no response, and petitioner continued: " 'Well, I guess Chuck isn't listening or he's not home at this time.' " (R. 187-88.)

On the following day, August 15, 1965, petitioner told Mr. Ambrose that he and the other party had entered the shop, that they had broken through two walls, and that they had come in contact with alarm wires. Petitioner stated that in fact they had not entered the shop but had backed out because they feared detection. Subsequently that same day petitioner related that they

had not really done this, that he had given Mr. Ambrose a "phony story." (R. 188-89.)

Mr. Ambrose related petitioner's remarks to his wife, and apparently on August 16, 1965, she showed him a newspaper article describing a coin shop burglary that had taken place in the City of Orange. That evening or the following day, Mr. Ambrose contacted the police and informed Officer Del Coma of petitioner's statements. (R. 189-90, 229-30.)

One or two weeks previously, Mr. Ambrose had visited petitioner's house and noticed that between eleven and fifteen electric typewriters were stored in a bedroom. Petitioner asked Mr. Ambrose whether the office where Ambrose worked as a title officer, the Security Title Insurance Company, used this brand of typewriter and whether the office was "in the market for any." Mr. Ambrose replied that his office used such machines but was not in need of any. (R. 190.)

When Mr. Ambrose asked where petitioner had obtained the machines, petitioner "just smiled" and asked whether Mr. Ambrose would like to purchase one. Mr. Ambrose replied, "'I don't know. Are they hot?'" (R. 190.)

Petitioner's reply was, "'Hotter than a $3 bill.'" (R. 190.)

At the trial Mr. Ambrose described petitioner as "one of the most expert individuals in working with precision tools that I have seen." Petitioner owned precision tools which he used to age coins and "redo" them to make them look new. These implements apparently were also used by petitioner in his profession as a dental technician. (R. 191, 239.)

On August 25, 1965, at Officer Del Coma's request, a Santa Ana police unit directed petitioner's vehicle to the side of a street in the City of Santa Ana. (R. 256, 265-66.) Officer Del Coma did not draw his gun, nor did he recall seeing any other officer with a drawn gun. (R. 256.) Petitioner was not arrested or taken into custody. (R. 256, 265.) He was asked to accompany the officer to the police station "and discuss a matter in which he had been alleged to be involved." (R. 256.) As Officer Del Coma testified at the trial, "After it was explained to Mr. Chimel what the situation was he voluntarily accompanied me to the Orange Police Department." (R. 265.) At the station Officer Del Coma discussed with petitioner the burglary of The Money Vault. Petitioner asked Officer Del Coma whether the police had considered the possibility that Mr. Slocum "had created this situation for insurance reasons." The conversation then centered on the possibility of the coins being returned, but "it was not definitely labeled as to who was going to return the coins." The conversation terminated, after a maximum of forty-five minutes or an hour, with the possibility of the coins being returned. Petitioner then left the station. (R. 258, 265, 370.) *At the trial it was petitioner's counsel who initially and deliberately elicited the testimony related to this incident.* (R. 256-57.)

Five days later, on August 30, 1965, a meeting took place at the City of Orange police station between petitioner, one Charles Hamburger, an attorney named Everett Jones, Officer Del Coma, and an Officer Ferguson. (R. 258-59, 342.)

Mr. Jones indicated that he was representing the two suspects in the burglary of The Money Vault, that

Officer Del Coma knew who they were, and that Jones' purpose was to attempt to negotiate the return of the coins so that there would be no civil claim by Mr. Slocum against Jones' clients. Mr. Jones said that he felt the missing coins could be returned. (R. 259-61.) Jones, Hamburger, and petitioner participated in the negotiations and "discussed the possibility of returning the coins from the burglary for a civil release," but Jones was "pretty much in control of the conversation." On several occasions Jones told petitioner to keep quiet. (R. 260-61, 264, 271.) Jones appeared to be representing both suspects. (R. 270.)

During the negotiations a problem arose as to the exact identification of the coins. Jones and his clients wanted a listing of all the missing items. Petitioner stated that he had seen the coin circuit teletype, that "there were things on there which were not taken," and that Mr. Slocum was possibly claiming a larger loss than he had suffered. A request was also made that Mr. Slocum be in a position to identify every missing coin. Mr. Slocum, who was present during a portion of the conversation, indicated that he could identify the majority of his loss but would have trouble identifying some of his recent acquisitions. (R. 264-65, 266-67.)

The conference ended after two hours, "still up in the air."[2] (R. 265.)

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[2]Petitioner's counsel made no objection to the admission in evidence of petitioner's statements to Officer Del Coma on this occasion and on the occasion of petitioner's earlier visit to the police station. It was stipulated by counsel that none of the statements came within the rules set forth in *Miranda v. Arizona*, 384 U.S. 436 (1966), and *People v. Dorado*, 62 Cal. 2d 338

(This footnote is continued on the next page)

Approximately one week after this conference, Mr. Slocum telephoned petitioner regarding the latter's failure to return the stolen coins. Mr. Slocum had been in touch with the police department. He told petitioner, " 'You had promised at the police department to bring the coins back, and why weren't they back?' " Mr. Slocum was very anxious to have his coins back since one-half to three-fourths of his inventory had been taken. (R. 106-07.)

Petitioner evaded Mr. Slocum's questions and acted as if he did not know what Mr. Slocum was talking about. Petitioner then said, " 'Did you ever think someone was trying to help you instead of hurt you by not cleaning you out completely?' " (R. 107.)

Mr. Slocum replied that he did not know how a much better job could have been done as far as "cleaning . . . [him] out." (R. 107.)

Sometime thereafter, but prior to September 13, 1965, the date of petitioner's initial arrest, Officer Del Coma had several contacts with Hamburger and received information from him regarding what petitioner had proposed to do with his own portion of the coins. During this period Officer Del Coma also received an unspecified number of Mr. Slocum's missing coins from the Torrance Police Department, which had seized them in attorney Jones' office. Hamburger was never arrested. (R. 268-69, 271.)

Around the first week of September, Officer Del Coma was informed of the following incident by Mr.

(1965) [398 P.2d 361], *cert. denied*, 381 U.S. 937 (1965), and that the court need not instruct the jury on this matter "in view of the fact that the Defendant was not in custody and was not subject to interrogation." (R. 386.)

Jack Parsons, the owner of the Lido Coin Shop in Costa Mesa, who had known petitioner for over a year. Petitioner had visited Mr. Parsons at the shop and related to him that petitioner and another party were involved in the recent burglary of The Money Vault, and that petitioner wanted Mr. Parsons to sell some coins for petitioner's wife if something happened to petitioner in connection with the present offense. Petitioner said that these coins were not part of the burglary, and Mr. Parsons agreed to sell them on this condition. (R. 194-96, 230.)

Mr. Parsons told petitioner that he should return the coins stolen from The Money Vault and that "with a break, nothing would happen." Petitioner replied that he had given the coins to someone else. Petitioner also said that there were some typewriters "involved with the same thing," but Mr. Parsons had not comprehended this statement. (R. 196-97.)

At the trial, Orange County Deputy District Attorney Robert E. Law was called as a witness by the defense, outside the presence of the jury, with regard to the procedures by which a warrant for petitioner's arrest was obtained on September 13th. Between August 15th and August 30th Officer Del Coma had submitted several reports regarding the burglary of The Money Vault to Mr. Law, whose function was "basically to determine from the facts stated in the reports and the investigation of the police whether or not a Complaint should be issued by the District Attorney's office, charging the Defendant with a crime." (R. 378-79.)

(In California the same complaint may serve the dual function of being (1) the basis upon which a magistrate, if satisfied therefrom that the offense complained

of has been committed, issues a warrant of arrest [California Penal Code section 813]; (2) the initial accusatory pleading in a felony prosecution [California Penal Code sections 806, 952].)

Among the reports submitted to Mr. Law by Officer Del Coma were a two-page report dated August 15th, a seven-page report dated August 17th, a four-page report dated August 19th, a four-page report dated August 24th, and a thirteen-page report dated August 30th. (R. 378-79.)

Mr. Law had several conversations with Officer Del Coma during the course of the officer's investigation of The Money Vault burglary. (R. 379-80.) On August 30th Mr. Law declined to have a complaint issue against petitioner. Mr. Law "was not satisfied"; he felt that there might be "enough" evidence against petitioner but wanted an officer to contact Mr. Parsons to whom petitioner was reported to have admitted committing the burglary of The Money Vault. (R. 380-81, 382.) At that date no law enforcement officer had spoken to Mr. Parsons about petitioner's statement. (R. 381.) Once he had definite information concerning petitioner's statement to Mr. Parsons, Mr. Law (on or about September 13th) authorized the filing of a complaint. (R. 382.) When he authorized the filing of the complaint, Mr. Law had also been informed of petitioner's statements to Mr. Ambrose but did *not* have information connecting petitioner to the burglary of the Pulati residence. (R. 380-82.)

Mr. Slocum made between ten and fifteen visits to the Orange Police Department in connection with the burglary of The Money Vault and had to make a couple

of changes in the list of missing coins prepared for the insurance company because of the coins returned to Mr. Slocum through the Torrance Police Department. (R. 153.)

On September 13, 1965, Officer Del Coma filed a complaint[3] upon which, at 10:39 on the morning of that day, a Municipal Court Judge of the Santa Ana-Orange Judicial District issued a warrant[4] for petitioner's arrest. The warrant commanded that petitioner be arrested "forthwith" and brought before that court. (Appendix A to Respondent's Brief.) Officer Del Coma interpreted the word "forthwith" as "right then . . . [w]hen practical." (R. 236-37.)

As petitioner's counsel elicited on cross-examination of Officer Del Coma at the trial, the officer did not obtain an arrest warrant because he thought he "needed" it. The officer testified, "Whenever possible I attempt to secure a Warrant prior to making an arrest; if the matter of investigation proceeds along the lines that I didn't have time to get one, I will proceed on reasonable cause." (R. 229.)

After securing the warrant Officer Del Coma returned to his department and followed customary procedure by checking the warrant into the warrant detail. An entry was made on a master card, and a warrant packet was made out by the records section. This policy was followed, except where there was a danger of immediate flight, because of "problems arising out

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[3]The complaint is set out verbatim in Appendix A to Respondent's Brief.

[4]The warrant was in the form prescribed by California Penal Code sections 814, 815, and 815a and is set out verbatim in Appendix A to Respondent's Brief.

of arrests on suspicion when there is a Warrant being secured." (R. 237-38.) The records section finished processing the warrant at approximately 2 p.m. that day. (R. 238.)

That day Officer Del Coma was "actively engaged" in several other burglary investigations, both prior to and subsequent to 2p.m. (R. 238.) (Officer Del Coma's monthly caseload of burglaries committed in the City of Orange ranged from a minimum of forty-five to a maximum of eighty. [R. 241.] Additionally, Officer Del Coma worked closely with the burglary detail of other police departments in Orange County on burglaries committed in other jurisdictions. [R. 241-42.])

At approximately 4 p.m. that day, September 13, 1965, Officer Del Coma arrived at petitioner's residence to execute the warrant of arrest. (R. 237.) Petitioner's house was a three-bedroom single structure located on an average tract-size property in the City of Santa Ana. (R. 243.) Officer Del Coma (who was from the City of Orange Police Department) was accompanied by two officers from the City of Santa Ana Police Department, Bob Moreno and Fred Gallmeister. (R. 114, 201, 230-31.) It was a general practice for any officer entering the city limits of another city to contact and work with the local police departent. (R. 201.)

When the officers arrived at the house, they knocked on the door. Petitioner's wife came to the door, and the officers identified themselves and asked whether they could step in and speak to her. Petitioner's wife "ushered" the officers into the residence and asked them to sit down. (R. 202.) Petitioner was not there, a circumstance known to the officers, who knew

the location of his place of employment but "had gone to the residence to keep from approaching him at his place of business to cause him any problem there." (R. 202, 223, 235-36, 237.)

As Officer Del Coma testified at the trial, "there was no particular direct delay on my part." Officer Del Coma specifically *denied* delaying the execution of the warrant of arrest until the time of petitioner's return home "so that the arrest could be made at his home and used as a pretense to search his home." (R. 237.)

Ten to fifteen minutes after the officers' arrival petitioner came home from work and entered the front room, where the officers were seated. (R. 231, 243.) Petitioner recognized Officer Del Coma from their previous conversations. Officer Del Coma stood up, informed him that the officers had a felony warrant for his arrest, and handed him the warrant for him to read and examine. At this time petitioner was "advised of his rights." (R. 202, 231.)

Officer Del Coma inquired whether petitioner "had any objections to . . . [Del Coma's] looking around the house. He said he'd rather that . . . [Del Coma] didn't." (R. 202.)

Officer Del Coma "advised him on the basis of the lawful arrest on a Felony Warrant, which he had just viewed, that I would like his wife to accompany me through the residence for a cursory search for any possible evidence from our burglary." (R. 202.)

The search that ensued at the premises took approximately forty-five minutes. Officer Del Coma "was trying to proceed as quickly as possible" so as not to linger with petitioner at the house. (R. 243-44.)

At the trial the testimony relating to the conduct of the search came entirely from Officer Del Coma, who described the search as follows:

"The basic, direct search was made in the master bedroom and the room commonly referred to as the sewing room." (R. 231.)

". . . [W]e went into what I would deem the adult bedroom or the master bedroom. We asked Mrs. Chimel to open drawers, asked her to physically move contents of the drawers from side to side so that we might view any items that would have come from our burglary. She did this without hesitation." (R. 204.)

". . . . In the master bedroom and the . . . sewing room, which in turn is a bedroom we did—she did physically uncover certain items in drawers, and as we would spot them, we would examine them.

"We picked up items that we felt were similar, or in fact the ones taken from our job. We left many items at the residence which we could not identify on the basis of a police report." (R. 204.)

"The specific medals or tokens or specific individual coins as to a particular exact location would be very hard at this time to relate. We found an assortment of all items in the master bedroom area and again in the bedroom that was referred to as the sewing room." (R. 204.)

". . . . There was a brief observation into the child's room, a visual search in the front room, a visual search in the kitchen into several cupboards in that area, a visual, cursory search in the garage, which is attached to the residence . . . ." (R. 231-32.)

Nothing in the child's room was seized. (R. 239.)

While in the garage Officer Del Coma observed a small dental workshop (petitioner was a dental technician) and certain marked plastic coin tubes which were not listed as missing or stolen. (R. 239.)

There was also a "visual, cursory search by opening up an opening into the attic." (R. 232.)

Officer Del Coma "had Mrs. Chimel with . . . [the officers] for the prime purpose of opening drawers in the bedroom, and had her arrange or slide the contents of these drawers. There was no ransack in any place throughout the premises." (R. 232.) It was petitioner's wife rather than the officers who opened the various drawers. (R. 238-39.)

The seized coins and medals, most of which were inside plastic tubes and cardboard boxes, were placed into two canvas satchels provided by petitioner's wife. (R. 204-05, 223-24, 227-28.) Apparently all the coins and medals seized were found in the master bedroom and the bedroom described as the sewing room. (R. 204, 223.) There were cardboard boxes and a small metal box in a closet in the sewing room, and the officers questioned petitioner's wife as to the contents. (R. 239.) The officers seized a quantity of Wilkinson Sword razor blades because, according to what petitioner told Officer Del Coma on this occasion, the razor blades were part of a "transaction in payment for a coin deal." Other than these razor blades, only coins and coin paraphernalia were seized.[5] (R. 228.)

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[5]The inventory of the seized items from the Superior Court file is set forth in Appendix B to Respondent's Brief.

On completion of the forty-five minute search at the residence, Officer Del Coma and the two Santa Ana officers left the premises. Officer Del Coma dropped off the other officers at their police station and brought petitioner to the Orange Police Department. Officer Del Coma and petitioner sat at Del Coma's desk in the Detective Bureau and went through the coins. An inventory of the property was made in petitioner's presence, and Officer Del Coma gave petitioner a signed copy. In turn petitioner approved the inventory and signed a copy. (R. 205, 224, 243.) The coins were that day checked into evidence at the Orange Police Department. (R. 224.)

Petitioner was released on bail sometime shortly thereafter. (R. 240.)

The record does not indicate expressly whether or not Mr. Slocum was able to identify any of the coins seized during the search as among those taken from The Money Vault. In this context it should be noted, however, that as a dealer his stock was continuously changing and that, with one exception, there is nothing in the record to suggest that even the rarer coins taken from The Money Vault were readily identifiable in the sense of being distinguishable from other rare specimens of the same denomination.[6] (R. 175-77; *compare* R. 272-74, 276-87, 296.)

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[6]Two months *after* the search, a readily identifiable coin from The Money Vault burglary was located at an establishment known as Type Coinage Unlimited. The owner of the coin store, Mr. Melvin Shapiro, had purchased this particular coin and several others from petitioner at the Professional Numismatist's Guild approximately two months after the burglary of The Money Vault. On January 25, 1966, Mr. Slocum, in the company of Mr. Don Burton, a representative of the District Attorney's office, identified the coin in question, an 1877-S trade

Significantly, however, Mr. Slocum specialized in Washington quarters, quarters were taken, and there were 145 Washington quarters among the coins recovered at petitioner's residence. A quantity of silver dollars was among the coins taken from The Money Vault, and the coins recovered at petitioner's residence included 28 silver dollars. (R. 89, 177; App. B. to Resp. Br.)

The trial court upheld the September 13th search as not only incident to an arrest upon a valid warrant but also as incident to an arrest upon probable cause, finding specifically that the information in the possession of Officer Del Coma constituted probable cause for petitioner's arrest. (R. 219-21, 22.)

The California Supreme Court found the arrest warrant to be defective but upheld the arrest as a valid arrest upon probable cause, holding that the search and

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dollar, from four "faulty" unusual markings on the back of the coin, as one of the coins that had been taken during the burglary of The Money Vault. (R. 97, 108-11, 160-62, 306-07.) This coin was the only trade dollar that Mr. Shapiro had possessed in the preceding two years. (R. 307.)

Thereafter, six to eight weeks prior to the trial in the present case, petitioner saw Mr. Shapiro and mentioned that he (petitioner) was going to trial. Mr. Shapiro stated that Mr. Slocum and Mr. Burton had taken the trade dollar, and said, "'Remember the trade dollar and the half cents?'" Petitioner replied, "'I remember the half cents; I don't recall the trade dollar.'" When Mr. Shapiro said that he would have to testify that he had obtained the trade dollar from petitioner, petitioner replied that if he (petitioner) denied it, it would be his word against Mr. Shapiro's. (R. 313-14.)

After one of the court sessions in the present case, petitioner told Mr. Ambrose, who was a witness as to certain of petitioner's extrajudicial admissions set forth above, that Mr. Ambrose was "the only one that could shoot him down on this thing." (R. 193.)

The evidence summarized in this note was received without limitation. It was relevant on the issue of petitioner's guilt but of course has no direct bearing on the legality of the search and seizure.

seizure which followed was reasonable as incident to the lawful arrest. *People v. Chimel,* 68 Cal. 2d 436, 440-42, 444 (1968) [439 P. 2d 333, 335-37, 338] (R. 421-24, 427.)

B. Evidence in Support of the September 16th Arrest and Search Involving the Burglary of the Pulati Residence

The following evidence, which was also received at trial on the issue of petitioner's guilt of the offenses charged in Count I (the burglary of the Pulati residence) and Count II (the concealment and withholding of the property stolen in the Pulati burglary), constituted the information known to Officer Fred Gallmeister of the City of Santa Ana Police Department on September 16, 1965, when he obtained and executed a warrant for petitioner's arrest for the burglary of the Pulati residence and, as an incident of the arrest, searched petitioner's residence. *The record does not indicate that anything was seized during this search, nor that any information possibly obtained thereby led to the admission of any evidence at petitioner's trial. Significantly, all the evidence relative to the occurrence of the second search was deliberately elicited by petitioner's counsel and none of it by the prosecuting attorney.* (R. 229, 233-34, 240-41, 243.)

Officer Del Coma, assigned to the Orange Police Department burglary detail, worked closely with the burglary detail of the Santa Ana Police Department. (R. 241-42.) Petitioner was also a suspect in the burglary of the residence of Mr. and Mrs. Vito Pulati, located in the City of Santa Ana. The Pulati burglary, like the burglary of The Money Vault in the City of Orange, involved the theft of rare and valuable coins. (R. 242.)

On September 15, 1965, two days after petitioner's arrest for the burglary of The Money Vault, Officers Gallmeister and Moreno of the Santa Ana Police Department came to the Orange Police Department in the company of Mr. and Mrs. Pulati. (R. 205.)

In the presence of Officer Del Coma, the two Santa Ana officers, and Mr. Joe Steele, a "recognized coin man," the Pulatis examined coins, medals, and tokens which Officer Del Coma had gathered from petitioner's residence during the search that followed petitioner's arrest for the burglary of The Money Vault. (R. 205, 226, 228, 240, 271-72.)

Mrs. Pulati testified at the trial as to how she and her husband were able to identify some of the items taken in the burglary of the Pulati residence from the quantity of coins, medals, and coin paraphernalia recovered during the search incident to petitioner's arrest for The Money Vault burglary:

> "Well, there were a great many items that were identical to items that we had lost in our burglary. We were looking specifically for something that was familiar, like packaging or a box or something that we could recognize, because coins, a lot of our coins when they were lost were just laying loose in a drawer. They weren't in a box or a holder or anything, and even though they were coins in these satchels with the same dates and the same type of a coin, they were now in some sort of a holder instead of just laying loose." (R. 272.)
>
> "Well, we lost so many different things: we lost hundreds of rolls of nickels, and there were a lot of rolls of nickels there, but I didn't pick up every one

of these rolls of nickels that Del Coma had at the police station that morning and check it out. There was no reason for that, because a roll of nickels is is just a roll of nickels unless it had my name on it or something." (R. 286-87.)

Among the items seized during the September 13th search and identified by the Pulatis [Superior Court Exhibit 11-A, R. 226] on September 15th as having been taken from their home were: (1) a somewhat unusual box which Mrs. Pulati had purchased in Sacramento (R. 272-74); (2) certain coins, medals, and tokens inside the box which had been inside it at the time of the burglary (R. 274-75, 288); (3) an Alaskan Native Brotherhood medal, two privately-issued tokens of very limited circulation issued by a Sherbrooke, Quebec coin dealer, two Civil War tokens, and a "No Tip" token (R. 276-78, 293); (4) medals issued by the Wyoming and Northern California Numismatic Associations; Guatamalan, Panamanian, Colombian, and French crowns; a roll of 1929-S Lincoln pennies on which there was a very unusual label bearing Mr. Pulati's handwriting (only partially scratched out), and some coin holders or wallets. (R. 279-83, 294-96; *see* App. B. to Resp. Br.)

With reference to one particular coin wallet which she identified, Mrs. Pulati had never seen anyone else use one of that type, with the exception of petitioner, who was using such a wallet two or three months after the burglary of the Pulatis' house but whom Mrs. Pulati had never seen using one prior to the burglary. The company that made the wallet had gone out of business. (R. 284.)

After the foregoing testimony was received at the trial relating the Pulatis' September 15th identification of these items, it was stipulated by petitioner's counsel and the deputy district attorney that the aforementioned coins and tokens identified by the Pulatis had been at the Pulatis' home on the night it was burglarized. (R. 298.)

Officers Gallmeister and Moreno were present when the aforementioned items were identified, and they considered petitioner a suspect in the Pulati burglary. As the sole two residential-burglary investigators of the Santa Ana Police Department at that time, they were aware of the following facts underlying the February 2, 1965, burglary of the Pulatis' Santa Ana home. (R. 41, 43-44, 48-49, 205, 235.)

Immediately upon learning that their home had been burglarized, the Pulatis had summoned the Santa Ana police. (R. 45, 48-49.)

The night of the burglary marked the one night that petitioner had missed a monthly meeting of any of the three coin clubs in which he and the Pulatis were concurrent members during the preceding period of approximately half a year. (R. 41-42, 44, 47-48, 60, 63.)

During the three months preceding the burglary of their home, the Pulatis had been visited at their home by petitioner on a regular basis. Petitioner lived nearby and would often drop by to discuss coins and buy and sell a few coins. During this period the Pulatis were engaged in re-inventorying and repackaging their collection of coins, and petitioner was often present while the Pulatis were so occupied. When on occasion petitioner expressed an interest in purchasing certain

coins, the Pulatis brought them out for him to examine. (R. 42-43.)

The Pulatis had a very diversified collection that included paper money, domestic and foreign coins, medals, and tokens. They had invested thousands of dollars in their collection and hoped one day to open a coin shop. (R. 43.) Their collection was worth approximately $25,000. (R. 57.)

The first time petitioner observed Mrs. Pulati working on a book of coins, he said, "'You have all these coins around the house. You must have insurance.'" She replied that she and her husband did have insurance. (R. 43.)

On the night of the burglary the Pulatis left at 6:50 p.m. to attend a meeting of one of the three coin clubs and returned at 10:30 p.m. (R. 43-44.) Upon their return they noticed that the porch lights were off and could not be turned on, and the lock had been cut out of the back door. (R. 44-45.)

After contacting the police the Pulatis checked their possessions. Certain medals and silver dollars were still on the coffee table where they had been left, and coins which had been in the dining room were still there. The sterling silver had not been moved from the dining room, and Mrs. Pulati's diamond watch was still lying on the dresser in the bedroom. There was no indication of the house having been ransacked. (R. 45-46, 70-71.)

The main portion of the Pulatis' coin collection was contained in a locked standard GI locker and had not been taken. Two large drawers containing a strong box and coins were missing, as well as a small cabinet

(full of coins) and a number of boxes of coins and supplies. These items had been located in the den, the room from which Mr. Pulati in the past had fetched coins to show to petitioner. (R. 46, 51, 56, 62-63, 69.) The missing supplies included coin wallets, coin holders, and books. (R. 70.) At the trial Mr. Pulati gave a detailed description of the missing coins. (R. 74.)

The two Santa Ana officers arrived several minutes after the Pulatis returned to their home. The Pulatis compiled a list generally describing the missing coins and gave it to the officers. Included on the list were silver dollars, as well as boxes and rolls of pennies, nickels, and dimes. The Pulatis had been in the process of making a new inventory of their coins and had almost completed this project. Their inventory books comprised several hundred pages detailing each individual coin. (R. 48-50, 75-76, 77.) Mrs. Pulati was specifically aware of the contents of the missing drawers, although she did not remember every coin. (R. 50-51.) Approximately two weeks after the burglary the Pulatis completed a detailed list of the missing coins for submission to their insurance company. (R. 61-62, 78-79.)

The cash or face value of the missing coins was between $500 and $800, and the retail numismatic value apparently was at least $2,541.62, the Pulatis having been compensated in this amount for their loss by the Liberty Mutual Insurance Company. (R. 53-54, 57-58, 59-60.)

The Santa Ana police questioned the Pulatis "about who we knew that could have possibly done this." (R. 49.) In addition to petitioner's unprecedented absence from a meeting of one of the three coin clubs on the

evening of the burglary, the fact that petitioner was one of only two persons in Santa Ana who knew that the Pulatis kept coins in their home led the Pulatis to believe that petitioner had committed the burglary. The other person who knew was the man who had sold the Pulatis their house; they were new in the area and did not yet know many people. (R. 60.) Petitioner was the only member of any of the three coin clubs of which the Pulatis were members who had been to their home. (R. 61.)

On the basis of what was disclosed by his investigation of the Pulati burglary, including the Pulatis' identification of some of the missing items retrieved during the September 13th search, Officer Gallmeister filed a complaint[7] (R. 233-34) on September 16, 1965, upon which at 10:30 a.m. that day, a Municipal Court Judge of the Santa Ana-Orange Judicial District issued a warrant[8] for petitioner's arrest. (R. 240; App. A to Resp. Br.)

Sometime on the afternoon of September 16th, Officers Moreno and Gallmeister arrived at petitioner's residence to execute the second warrant of arrest. (R. 240.) Officer Del Coma accompanied the two Santa Ana officers since the Orange and Santa Ana Police Departments were coordinating their investigations of the two burglaries, petitioner being a suspect in both instances. The two Santa Ana officers conducted a search incident to arresting petitioner, but Officer Del

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[7]The complaint is set out verbatim in Appendix A to Respondent's Brief.

[8]The warrant was in the form prescribed by California Penal Code sections 814, 815, and 815a and is set out verbatim in Appendix A to Respondent's Brief.

Coma did not observe the search. Officer Del Coma either remained on the front porch steps or stepped inside the front door. (R. 229, 233-34, 235, 240-41.) The search was not as "thorough" as the September 13th search. (R. 233.)

C. The Defense

Morris Diehl, a coin dealer, testified that certain coins, medals, and tokens, identified as among those taken from the Pulatis' home and recovered at petitioner's residence, were purchased by petitioner from an unknown man at Coinarama (a place of general exchange for coin dealers) in February or March of 1965. (R. 299-300.)

On cross-examination, Diehl testified that he was 18 years of age at the time of this incident. Diehl claimed to recognize the coins involved from certain dents and gouges. (R. 301.) Petitioner had told Diehl to testify that petitioner had purchased the medals and tokens. (R. 303.)

Petitioner testified in his own behalf, giving his occupation as dental technician and coin dealer. (R. 334.) He repeated essentially the same story related by Diehl. (R. 340-41.) Petitioner denied knowing that the coins in question had been stolen from the Pulatis. (R. 342.) He did not collect medals but had purchased the medals at Coinarama as part of a package deal. (R. 364-65.) Petitioner did not remember whether the red coin wallet was part of the transaction but later changed his testimony and stated that he recalled purchasing the coin wallet at a coin shop. (R. 367, 388.) Petitioner denied having burglarized The Money Vault and the Pulatis' home, or having had anything to do with the two burglaries. (R. 354.)

Petitioner claimed to have spent the evening of August 14, 1965 (the night of The Money Vault burglary) driving around town with Hamburger trying to observe the Watts riots and later playing poker with Hamburger. Between the hours of 12:10 a.m. and 8 a.m. on August 15, 1965, petitioner was at home. (R. 336-40, 362-63.)

At an earlier date petitioner had had a conversation with Mr. Slocum in which Slocum purportedly had told him, " 'I'd like to have my place wiped out. Just that; that's the only way I can collect on my insurance, but I need more insurance money.' " (R. 351.) Mr. Slocum related that there was a skylight above The Money Vault and said, " 'You can get in through that way.' " (R. 352.)

Petitioner purportedly received a telephone call from an unidentified man on August 14, 1965; the man, referring to The Money Vault, related " 'You know, I think I am going to knock that place off.' " (R. 335.)

On the morning of August 15, 1965, the same unidentified man purportedly telephoned petitioner and said, " 'Say, I couldn't get in that place.' " The man related that he had gotten through one or two walls, had run into some wires, and had been unable to get in. (R. 357-58.)

Shortly after petitioner's first conversation with the unidentified man, Mr. Ambrose had dropped by and asked petitioner to go bicycle riding with him. Petitioner declined, stating that he had "a big deal" and that he was "going to knock off a coin shop." Petitioner joked around and attempted to contact Chuck Hamburger on the Walkie-Talkie. (R. 336.)

On cross-examination, petitioner admitted having told Mr. Ambrose that he had gone through two walls to reach the interior of The Money Vault but that he had found some black wires and "did not commit the burglary." Petitioner had later told Mr. Ambrose that the whole story was a joke. (R. 357.)

Petitioner admitted having subsequently told Mr. Parsons that he (petitioner) had "pulled" The Money Vault "job." Petitioner told Mr. Parsons, " 'Who knows, I may even probably go to jail on this thing.' " (R. 360, 372.) Petitioner testified that he "could have very easily" told Mr. Parsons that the reason petitioner had not returned the coins to Mr. Slocum was that "the coins in some way had something to do with typewriters." (R. 361.)

Attorney Everett Jones testified that during August of 1965 he was representing Charles Hamburger but that he had never represented petitioner. (R. 343.)

On cross-examination, Jones testified that he had appeared at the City of Orange Police Department at the same time as petitioner and Hamburger, but that he was not representing petitioner on that occasion. Jones purportedly made it "entirely plain" that he represented only Hamburger, and Jones so informed Officer Del Coma. Jones had not told Del Coma that he was representing "the suspects" in the burglary of The Money Vault. (R. 343-44.)

Jones denied that a police officer had entered Jones' office and, viewing certain coins on Jones' desk, said: " 'Hey, that's part of the loot of the B.R. [Slocum] burglary.' " Jones denied having said, " 'Take the coins; I want no part of them.' " (R. 344.)

Summary of Argument

The validity of the search of petitioner's residence depends upon the applicability of the rule permitting searches incident to arrest inasmuch as the officer who conducted the search did not procure a search warrant, did not obtain a valid consent to search the premises, and was not presented with an emergency situation.

Petitioner concedes (Pet. Op. Br. p. 28), as he must in the face of the record, that the arrest was lawful since the officer had probable cause to believe that petitioner had committed the burglary of the coin shop known as The Money Vault. Despite the California Supreme Court's conclusion that the warrant for petitioner's arrest in possession of the arresting officer was defective because issued upon insufficient factual averments, the court correctly upheld the arrest on the theory of probable cause apart from the warrant, since at the trial the prosecution had justified the arrest on that theory as well as on the warrant and the trial court had found the arrest lawful on both grounds. *Giordenello v. United States,* 357 U.S. 480, 486 (1958) (relied on in the present case by the trial court, the Court of Appeal, and the California Supreme Court).

The right under certain circumstances to conduct a reasonable search incident to arrest is well founded in the common law and this Court's decisions and is an essential technique in day-to-day law enforcement. The present search was clearly reasonable under current standards, the continued validity of which is apparent in light of the necessity of balancing the traditional right of citizens to be free from unreasonable invasions of privacy with the need of citizens for effective protection from increasing crime.

The objective of the search was as legitimate as any imaginable—to return thousands of dollars of coins to their owner, who had had up to three-fourths of his inventory stolen by petitioner. *See Warden v. Hayden,* 387 U.S. 294, 311 (1967) (concurring opinion of Mr. Justice Fortas). The arresting officer knew that petitioner was a coin collector and that he had bragged to several acquaintances about having committed the burglary, and all indications pointed to the coins being secreted at petitioner's residence. Furthermore, the likelihood that the coins were at petitioner's residence at the time of his arrest also gave the arresting officer probable cause to believe that petitioner was committing in his presence the felony of concealing and withholding stolen property. Cal. Penal Code § 496.

The search immediately followed petitioner's arrest in the front room of his residence and was confined to areas where the arresting officer reasonably expected to find the fruits of the particular burglary for which petitioner had just been arrested. The permissible scope of a search without a search warrant must be judged by its objectives, *Warden v. Hayden,* 387 U.S. 294, 310-11 (1967) (concurring opinion of Mr. Justice Fortas), cited in *Terry v. Ohio,* 392 U.S. 1, 19, 26, 29 (1968), and since the bedroom and the sewing room where all the seized coins and coin paraphernalia were retrieved were likely places of concealment for this stolen property, it was reasonable for the officer to look in those places. The remaining areas "searched" were also likely places of concealment, were subjected to no more than cursory visual observation, and in any event yielded no evidence.

The recognized objective of restoring the stolen property to its owner would not be served by arbitrarily restricting the search to the particular room fortuitously fixed as the place of arrest. Such a restriction would be a novel departure from past practice. *See, e.g.,* the search upheld in *Harris v. United States,* 331 U.S. 145, 152 (1947), the extensiveness and intensity of which dwarfs what took place here. Substitution of an inflexible standard for the present guideline of reasonableness under all the circumstances of the particular case would give rise to continual problems of definition and distinction. If the scope of reasonable search is to be limited to a particular circumference around the suspect, or to the room where the arrest takes place, how large may the circumference or the room be? What of hallways, and of a room that actually is no more than an area divided by a partition from the remainder of the room?

Petitioner's contention that the arrest was a mere pretext for the search and was deliberately delayed and maneuvered so as to enable the arresting officer to search petitioner's residence is sheer speculation refuted by an unequivocal record. *See Abel v. United States,* 362 U.S. 217, 225-28 (1960). The period of less than six hours between issuance of the arrest warrant and execution of the warrant was occupied by the Orange Police Department's customary preparation of a warrant packet, by other burglary investigations occupying the time of the arresting officer, and by the time spent contacting the Santa Ana police in whose jurisdiction petitioner's residence was located. Moreover, the arresting officer expressly desired not to embarrass petitioner by arresting him at the latter's place of

employment. Certainly petitioner had no constitutional right to be arrested at the earliest or most convenient time, nor at a particular place (such as the dental establishment at which he worked) where the officer would be least likely to find incriminating evidence as the result of a search incident to the arrest. *See Hoffa v. United States,* 385 U.S. 293, 310 (1966).

Everything about the search exuded reasonableness. The officer's conduct did not consist of merely formal or perfunctory compliance with the bare essentials of the Fourth Amendment's mandate of reasonableness. Before arresting petitioner, the officer consulted the district attorney's office on numerous occasions, complying with the suggestion that he obtain still more evidence connecting petitioner to the burglary before arresting him. Thereafter the officer filed a complaint seeking a warrant for petitioner's arrest—not out of any erroneous view that the law required it, but merely out of a commendable preference for this mode of procedure whenever the circumstances permitted it.

The arrest and the search were effected in a particularly reasonable manner. In accordance with the practice of his department, the arresting officer (Officer Del Coma from the City of Orange Police Department) had two officers from the Santa Ana Police Department accompany him since petitioner's residence was located in that jurisdiction. Officer Del Coma knocked on the door, identified himself to petitioner's wife, and asked whether he and the other officers could enter. Petitioner was advised of his rights and treated with the utmost courtesy. He was shown the warrant to read and examine.

The manner of conducting the search was restrained and designed to minimize the invasion of petitioner's privacy. Petitioner's wife was asked to accompany the officer in his attempt to retrieve the coins missing from The Money Vault. This was done for the express purpose of having her, rather than the officer, open the drawers and move their contents. This she did without hesitation. There was no ransacking. Only coins and coin paraphernalia which appeared to have been taken from The Money Vault were retrieved; many other such items were left at the premises. The search took only forty-five minutes; the officer proceeded as quickly as possible because of his desire not to linger with petitioner unnecessarily. Immediately following the search a detailed inventory of the seized property was compiled in petitioner's presence, and petitioner was given a copy.

In view of Mr. Slocum's status as a dealer with a continuously changing stock, and the difficulty generally in distinguishing one coin (even a rare item) from other specimens of the same denomination, it is not surprising that none of the seized coins were positively identified as from The Money Vault burglary. However, a comparison of some of the items stolen with some of the coins recovered at petitioner's residence suggests strongly that they were the same. That a small portion of the seized coins turned out to be the fruits of another burglary committed by petitioner, that of the Pulati residence, did not require exclusion of those coins from evidence. *Abel v. United States*, 362 U.S. 217, 238 (1960).

Clearly the present search and seizure was impeccable. Should it be invalidated solely because of the arresting officer's failure to employ a search warrant?

Granted the law's *preference* for search warrants, it is a totally different thing to hold that the States have violated the Constitution by accepting this Court's express invitation to develop workable rules, governing arrests and searches, based on the principle of reasonableness under all the circumstances of the case rather than on the practicability of obtaining a search warrant. *See Ker v. California,* 374 U.S. 23, 33-34, 41 (1963), citing with approval *United States v. Rabinowitz,* 339 U.S. 56, 61, 63 (1950). *See also Sibron v. New York,* 392 U.S. 40, 60-61 (1968).

The rule of *Trupiano v. United States,* 334 U.S. 699 (1948), expressly overruled in *Rabinowitz* two years later, held invalid any lawful search conducted without a search warrant under circumstances where it would have been practicable to obtain a search warrant. It is respondent's position that re-adoption of the *Trupiano* rule is not required by the Constitution and would be highly undesirable from the standpoint of sound judicial policy. However, it is submitted that the present search would pass muster even under the stringent requirements of *Trupiano,* provided the "practicability" requirement were given an interpretation consistent with this Court's stated concern with "the practical demands of effective criminal investigation and law enforcement." *Elkins v. United States,* 364 U.S. 206, 222 (1960). Although the arresting officer in the present case could have obtained a search warrant, the practical difficulties involved excused the officer's failure to proceed by this method.

Problems peculiar to the description of thousands of coins would have made it extremely burdensome in terms of time and effort for Officer Del Coma to exe-

cute an affidavit upon which a search warrant could properly issue. Since petitioner was known to have his own coin collection, the requirement of particular description would have necessitated an extremely detailed affidavit, perhaps individually describing each coin, in order to permit the stolen coins to be distinguished from petitioner's own collection on the premises. *Stanford v. Texas*, 379 U.S. 476, 485-86 (1965); *Marron v. United States*, 275 U.S. 192, 196 (1927); *Aday v. Superior Court*, 55 Cal. 2d 789, 795-96 (1961) [362 P.2d 47, 51].

However, putting aside considerations peculiar to the instant case, it is apparent that a blanket rule requiring a search warrant absent emergency circumstances would not serve to protect the average citizen's right to privacy and would only hinder his right to effective protection from lawlessness.

It has been said that it takes two hours under ideal conditions to obtain a search warrant. Nationwide in 1967 there were 239,461 arrests for burglary alone (and 1,605,700 reported burglaries committed). A rule requiring a search warrant in all but emergency situations would place an intolerable burden on magistrates, prosecutors, and law enforcement officers without effecting a commensurate advancement of the rights of the individual. Studies have shown that the protection theoretically afforded by the warrant procedure is often illusory and in any event rarely affords the suspect more careful and deliberate consideration than that

which petitioner received from the police force and the district attorney's office involved in the present case.

A rule requiring a search warrant in all but emergency situations would not achieve the dubious goal of total "uniformity" and would provide far more problems than the flexible *Rabinowitz* test. A uniform rule is an inappropriate means with which to cope with the heterogeneous and everchanging conditions that daily confront the average officer in metropolitan, suburban, and rural jurisdictions throughout the various regions of the nation. Moreover, such a rule is unnecessary to ensure the use of search warrants, since there are many incentives to use warrants increasingly and there is evidence that law enforcement officers are advised by prosecuting agencies to proceed by this method. Significantly, this Court has on many occasions noted that the exclusionary rule is the most effective means of securing compliance with the Fourth Amendment's proscription against unreasonable searches and seizures, and California law provides a multitude of opportunities before and after trial for determining whether an arresting officer really had probable cause prior to making the arrest and the search incident thereto.

As they become needed, guidelines as to what is a reasonable search under particular circumstances can best be formulated on a case by case basis as in the past, the validity of these standards being determined by eventual judicial review of the cases applying the standards. This pragmatic approach, unlike attempts to place

unknown future cases into molds of the present, would be consistent with this Court's well-settled practice "not to formulate a rule of constitutional law broader than is required by the precise facts presented in the record." *Garner v. Louisiana,* 368 U.S. 157, 163 (1961).

Considering the enormous increase in the crime rate and the dismally low percentage of stolen property recovered, this is "a rather inopportune time to create a single rule more than the Constitution plainly requires." *Mancusi v. De Forte,* 392 U.S. 364, 373 (1968) (dissenting opinion of Mr. Justice Black, concurred in by Mr. Justice Stewart). In the present case the arresting officer had sufficient information to obtain a search warrant and did nothing that he could not have done pursuant to a warrant. Nor was justification of the search facilitated in any way by the fact that judicial review occurred subsequent to the search rather than as an antecedent thereto. Petitioner received the substance of the protection which a search warrant is designed to provide. The officer's action in conducting the search as an incident to the arrest instead of by search warrant added little if anything to the invasion of petitioner's privacy occasioned by his concededly lawful arrest. *Trupiano v. United States,* 334 U.S. 699, 714 (1948) (dissenting opinion of Chief Justice Vinson). On the contrary, a greater quantum of information was perhaps required of the officer than if he had had a search warrant. *Aguilar v. Texas,* 378 U.S. 108, 111 (1964). To insist upon the use of a search war-

rant in this type of situation "where the issuance of such a warrant can contribute nothing to the preservation of the rights which the Fourth Amendment was intended to protect," would "menace the effective operation of government which is an essential precondition to the existence of all civil liberties." *Trupiano v. United States,* 334 U.S. 699, 714-15 (1948) (dissenting opinion of Chief Justice Vinson, concurred in by Mr. Justice Black and Justices Reed and Burton).

Finally, even if it is assumed that the search were unlawful and its fruits improperly received in evidence, such error would clearly be harmless beyond a reasonable doubt as to both offenses. *Chapman v. California,* 386 U.S. 18, 24 (1967). The circumstantial evidence of petitioner's guilt of the Pulati burglary was so abundant that the reception of evidence establishing that some of the Pulatis' coins were recovered at petitioner's residence during the search did not bring about a verdict which would not otherwise have resulted. *A fortiori,* there was no prejudice as to the conviction involving The Money Vault burglary, since none of the coins recovered during the search were identified as from The Money Vault burglary, and since petitioner made extrajudicial statements to several civilian witnesses admitting that he had committed this burglary.

ARGUMENT

I

EXISTING LAW AND CONSIDERATIONS OF POLICY COMPEL THE CONCLUSION THAT IT WAS REASONABLE IN A STATE PROCEEDING FOR A POLICE OFFICER, AS AN INCIDENT OF A VALID BURGLARY ARREST AND WITHOUT A SEARCH WARRANT, TO SEARCH THE PLACE OF PETITIONER'S ARREST FOR PROPERTY BELIEVED STOLEN BY PETITIONER DURING THE BURGLARY

Petitioner's claim of error is based entirely on the admission in evidence of certain rare coins which, he contends, were obtained as the result of a search and seizure conducted in purported violation of the Fourth and Fourteenth Amendments to the Constitution. Inasmuch as the officer who conducted the search had not procured a search warrant, did not obtain a valid consent to search the premises, and no emergency situation was present, the validity of the search and seizure depends initially upon the legality of the arrest and secondly upon whether the search and seizure of the stolen coins was a reasonable incident of the arrest.

A. Under This Court's Ruling in Giordenello v. United States, 357 U.S. 480 (1958), the Arresting Officer's Action in Securing an Arrest Warrant Which Was Subsequently Held Defective by the State Courts Did Not Preclude the Prosecution From Justifying the Arrest, at the Trial and on Appeal, on the Theory of Probable Cause Apart From the Warrant

The trial court upheld the September 13th arrest on two separate grounds, holding (1) that the warrant of arrest was valid, and (2) that the information in the possession of Officer Del Coma gave him probable

cause to arrest petitioner apart from the warrant of arrest. (R. 219-21, 222.) The evidence in support of the trial court's finding of probable cause is set forth at length in subsection (a) of the preceding Statement of the Proceedings.

The California Supreme Court found this arrest warrant to be defective under its holding in the companion case of *People v. Sesslin,* 68 Cal. 2d 418 (1968) [439 P. 2d 321] (R. 402-18),[9] because the complaint upon which it was issued (*see* Appendix A to Respondent's Brief) was "insufficient to support a valid warrant." *People v. Chimel,* 68 Cal. 2d 436, 440 (1968) [439 P.2d 333, 335] (R. 421.) The *Sesslin* holding was premised on this Court's decisions in *Giordenello v. United States,* 357 U.S. 480, 486 (1958), *Aguilar v. Texas,* 378 U.S. 108, 112(n.3), 114-15 (1964), and *Barnes v. Texas,* 380 U.S. 253 (1965) [reversing *Barnes v. State,* 390 S.W.2d 266 (Tex. Crim. App. 1964)]. *People v. Sesslin, supra* at 422-24 [439 P.2d at 324-26] (R. 403-06.)

However, the California Supreme Court, relying on this Court's opinions in *Giordenello, supra* at 487-88, *Go-Bart Co. v. United States,* 282 U.S. 344, 356 (1931), and *Stallings v. Splain,* 253 U.S. 339, 342 (1920), concluded that there was probable cause to arrest petitioner, who "unlike the petitioner in Giordenello, ... obtained ample notice that the prosecution did not rest the justification for the arrest solely on the warrant."[10]

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[9]Certiorari was denied by this Court in the *Sesslin* case on February 24, 1969. (37 U.S.L.W. 3308.)

[10]*Giordenello, Aguilar v. Texas,* 378 U.S. 108 (1964), and *Ker v. California,* 374 U.S. 23 (1963), were called to the atten-

(This footnote is continued on the next page)

People v. Chimel, *supra* at 441 [439 P.2d at 336] (R. 422.)

The court added,

". . . Moreover, no evidence even intimates that Del Coma procured the warrant in bad faith or exploited the illegality of the warrant. (Contrast Go-Bart Co. v. United States, supra, 282 U.S. 344, 358. . . .) If Del Coma had been proceeding without a warrant in arresting defendant, the arrest would have been lawful. To invalidate the arrest here *solely* because the arresting officer first obtained a warrant supported by a constitutionally insufficient complaint would not further the policies of the Fourth Amendment but would subvert its preference for arrests and searches conducted pursuant to warrants."[11] (Emphasis by the court.)

People v. Chimel, supra at 442 [439 P.2d at 337] (R. 423-24.)

". . . Officers would very likely eschew the warrant that could both fall of its own weight and bring down with it the structure of an otherwise impeccable search and seizure."

People v. Chimel, supra at 444 [439 P.2d at 338] (R. 427);

See United States v. Ventresca, 380 U.S. 102, 108-09 (1965).

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tion of the trial court (R. 30-31, 207) prior to its ruling that there was probable cause to arrest petitioner apart from the warrant of arrest. (R. 219-21, 222.)

[11]The test, as expressed by this Court in a somewhat analogous situation involving the exclusion of evidence under the Fourth Amendment, is " 'whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.' " *Wong Sun v. United States*, 371 U.S. 471, 488 (1963). *See also Hoffa v. United States*, 385 U.S. 293, 308-09 (1966); *Nardone v. United States*, 308 U.S. 338, 341 (1939).

Because in *Giordenello* the Government relied entirely in the lower courts on the validity of the warrant in defending the legality of the defendant's arrest, this Court held that the Government was not free before the Court to justify the arrest on grounds apart from the warrant. It was held that injection of this new theory "would unfairly deprive petitioner of an adequate opportunity to respond." The Court was careful to note, however, that in the event of a new trial the Government could "seek to justify petitioner's arrest without relying on the warrant." (357 U.S. at 488.) Numerous federal appellate decisions have upheld arrests supported by probable cause even though the arresting officer acted pursuant to an arrest warrant defective under *Giordenello*. *See* cases cited in *People v. Chimel*, 68 Cal. 2d at 440 (n.1) [439 P.2d at 336] (R. 422.)

See also United States v. Rabinowitz, 339 U.S. 56, 60 (1950);

Go-Bart Co. v. United States, 282 U.S. 344, 355-56 (1931).

In light of *Giordenello*, and California's permissible development of "workable rules governing arrest," *Ker v. California*, 374 U.S. 23, 34 (1963), the arrest of petitioner on September 13, 1965, clearly was lawful.

B. The Right to Conduct a Reasonable Search Incident to Arrest, in Particular a Search to Recover Property Stolen During the Offense for Which the Suspect Is Being Arrested, Is Well Founded in the Common Law and in This Court's Decisions

The Fourth Amendment to the Constitution provides:

"The right of the people to be secure in their persons, houses, papers, and effects, against unrea-

sonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Significantly the Fourth Amendment does not confer a narrow grant of the power to search; instead it recognizes only a qualification, on the existing right to search, against *unreasonable* searches. The development of the common law in England and the American Colonies is a relevant source of information in ascertaining the meaning of the Fourth Amendment's proscription against searches and seizures that are "unreasonable."

Weeks v. United States, 232 U.S. 383, 389-92 (1914);

Boyd v. United States, 116 U.S. 616, 624-27 (1886).

". . . The law is perfectly well settled that the first ten amendments to the Constitution, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors, and which had from time immemorial been subject to certain well-recognized exceptions arising from the necessities of the case. In incorporating these principles into the fundamental law there was no intention of disregarding the exceptions, which continued to be recognized as if they had been formally expressed. . . ."

Robertson v. Baldwin, 165 U.S. 275, 281 (1897).

The repeated references in Petitioner's Opening Brief to the somewhat ambiguous Clauses 38 and 39 of the Magna Carta do not support petitioner's implication that the search of a man's residence under the present circumstances would not have been permitted at common law. Commentators have recognized that the Magna Carta "was in any event not an early analogue to present-day search restrictions."[12] J. Landynski, Search and Seizure and the Supreme Court 26 (1966).

By the late seventeenth century, "[t]he principle that search and seizure must be reasonable, that there must be a balancing of the problems of the administration of justice with those of the freedom of the individual, was emerging slowly and was assuming more and more the character of an underlying concept of jurisprudence." N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution 34 (1937).

Restrictions on search and seizure in England and the American Colonies were designed primarily to end the practice of issuing general warrants, which had become widespread by the sixteenth and seventeenth centuries and left unspecified one or more of the following: the offense charged, the property to be seized, the premises to be searched, or the suspected offender. Regarding the English experience, "[w]hat is significant to note is that this history is largely a history of con-

[12] "It was merely intended to prevent the king from swooping down, as was his practice, on those who had offended him and arbitrarily meting out judgment without recourse to established legal procedures of the day (such as trial by combat). . . ." J. Landynski, Search and Seizure and the Supreme Court 26 (1966). *See also* N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution 20-21 (1937).

flict between the Crown and the press. It was in enforcing the laws licensing the publication of literature and, later, in prosecutions for seditious libel that general warrants were systematically used." *Stanford v. Texas*, 379 U.S. 476, 482-83 (1965). *See also* J. Landynski, Search and Seizure in the Supreme Court 20-24 (1966); N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution 24-29 (1937). In the Colonies the controversy over general warrants allowing customs agents the assistance of peace officers to enter forcibly and unannounced for the purpose of searching any place at any time for any suspected customs infraction is said to have been a major cause in the chain of circumstances leading to the American Revolution and foremost in the minds of the men who drafted the Fourth Amendment.

Ker v. California, 374 U.S. 23, 51-52 (1963) (opinion of Mr. Justice Brennan);
Landynski, *supra* at 30-38;
Lasson, *supra* at 33.

Chief Justice Hale's authoritative History of the Pleas of the Crown, written in the seventeenth century by one of the greatest jurists in English history, is considered the leading work in this area[13] and rejects the more restrictive view propounded by Lord Coke and relied upon by petitioner. Hale condemned general warrants but rejected Coke's view that any search for stolen goods, even pursuant to a search warrant, was improper. 2 M. Hale, Pleas of the Crown 112-14 (1st

[13] 1 J. F. Stephen, A History of the Criminal Law of England 193 (1883); Lasson, *supra* at 35.

Am. ed. 1847). *See* N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution 36 (1937). Hale's position, which reflected the prevalent practice of his times, was that "at common law a private person might and a constable ought to arrest supposed felons upon suspicion without warrant" provided there are "reasonable grounds of [their] having committed any felony; whether in fact any such felony has been committed or not." 1 J. F. Stephen, A History of the Criminal Law of England 192-93 (1883). *See also* 3 S. W. Holdsworth, A History of English Law 601-02 (3d ed. 1923).

This Court has noted that the "seizure of stolen goods is authorized by common law," *Boyd v. United States,* 116 U.S. 616, 623 (1886), and that the government has a right "always recognized under English and American law, to search the person of the accused when legally arrested to discover and seize the fruits or evidences of crime." *Weeks v. United States,* 232 U.S. 383, 392 (1914). *See* the opinion by Justice Cardozo, then Judge of the New York Court of Appeals, in *People v. Chiagles,* 237 N.Y. 193 (1923) [142 N.E. 583]. Thus it is only unreasonable searches that were prohibited under the common law, as by the enactment of the Fourth Amendment. "It was recognized by the framers of the Constitution that there were reasonable searches for which no warrant was required" and that among such searches was the search of a person incident to a valid arrest. *United States v. Rabinowitz,* 339 U.S. 56, 60 (1950).

Implicit in the right to search an arrested person for the fruits of the crime for which he is being arrested is the right to search in a reasonable manner

the area "in his control," *Carroll v. United States,* 267 U.S. 132, 158 (1925), and the "place where the arrest is made," in pursuance of this objective. *Agnello v. United States,* 269 U.S. 20, 30 (1925). Under some circumstances a search, incident to arrest, for the fruits of a crime or the means by which it is being carried on may reasonably extend "to all parts of the premises used for the unlawful purpose." *Marron v. United States,* 275 U.S. 192, 199 (1927). Certainly the search of such an area does not in any meaningful way add to the invasion of the suspect's privacy occasioned by the lawful arrest.[14] *Trupiano v. United States,* 334 U.S. 699, 714 (1948) (dissenting opinion of Chief Justice Vinson.)

This Court has set forth the following criterion for determining the lawfulness of a search:

> ". . . The relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable. That criterion in turn

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[14]This Court recently rejected the long-standing federal rule prohibiting seizure of items of merely evidential value. *Warden v. Hayden,* 387 U.S. 294, 310 (1967). This rule had led the Court to the conclusion that in *United States v. Lefkowitz,* 285 U.S. 452, 464-65 (1932), and *Go-Bart v. United States,* 282 U.S. 344, 358 (1931), certain papers were unlawfully obtained in the course of an exploratory search for mere evidence of crime. In *Lefkowitz* the Court held that the seized papers could not have been searched for and seized even had the officers obtained a valid search warrant. The Court also found the search to be a general search for evidence of the charged offense "or some other crime." 285 U.S. at 464-65. *Go-Bart* is distinguishable from the present case on the additional grounds that there one of the agents falsely claimed to have a search warrant, *cf. Bumper v. North Carolina,* 391 U.S. 543, 549-50 (1968), employed threats of force, and ransacked the premises "in the hope that evidence of crime might be found." 282 U.S. at 358. *See Harris v. United States,* 331 U.S. 145, 152 (n. 16), 153 (1947).

depends upon the facts and circumstances—the total atmosphere of the case. It is a sufficient precaution that law officers must justify their conduct before courts which have always been, and must be, jealous of the individual's right of privacy within the broad sweep of the Fourth Amendment."

United States v. Rabinowitz, 339 U.S. 56, 66 (1950).

C. Under Current Standards the Present Search Was Reasonable, and the Continued Validity of These Standards Is Apparent in Light of the Necessity of Balancing the Traditional Right of Citizens to Be Free From Unreasonable Invasions of Privacy With the Need of Citizens for Effective Protection From Increasing Crime

The California Supreme Court, in a judgment concurred in by six of the seven justices, held that the search in question was "a 'reasonable' search within the meaning of the Fourth Amendment" and affirmed the judgment of conviction,[15] relying on this Court's decisions in *Ker v. California,* 374 U.S. 23, 41 (1963); *Marron v. United States,* 275 U.S. 192, 196, 198-99 (1927); and *Agnello v. United States,* 269 U.S. 20, 30 (1965). *People v. Chimel,* 68 Cal. 2d 436, 441 (n.2), 442 (1968) [439 P.2d 333, 336, 337] (R. 422-24.)

[15]The sole dissenter, Justice Peters, concluded that the judgment should be reversed only because he felt the arresting officer should be bound to abide by his "election" to arrest petitioner pursuant to the warrant of arrest. *People v. Chimel,* 68 Cal. 2d 436, 445 (1968) [439 P.2d 333, 339] (R. 428.)

The court found that the search was made in good faith, 68 Cal. 2d at 442 [439 P.2d at 337] (R. 423-24), and concluded:

> ". . . Officer Del Coma acted reasonably in going to defendant's home to execute the warrant; the search was incident to an arrest based on probable cause, and only items which reasonably appeared to be connected with the Money Vault burglary were seized. That some of such items were subsequently identified as coins and medals stolen from the Pulati residence in February 1965 does not invalidate the search which produced them. Hence the coins and other numismatic items which the prosecution introduced into evidence were admissible." 68 Cal.2d at 442-43 [439 P.2d at 337] (R. 424-25.)

The search of petitioner's residence incident to his arrest on September 13, 1965, which search turned up the evidence whose admissibility at trial is presently contested, was clearly reasonable in light of this Court's decisions upholding the validity of searches without a search warrant as incident to arrest effected by arrest warrant, *United States v. Rabinowitz,* 339 U.S. 56 (1950), and as incident to arrest supported by probable cause. *Ker v. California,* 374 U.S. 23 (1963).

As will be explained in more detail below, the foregoing conclusion is compelled by evidence in the record indicating the following: (1) petitioner's arrest on the date in question was lawful; (2) as an incident of that arrest the arresting officer could search the area in petitioner's control for the property stolen during the course of the burglary for which petitioner had

just been arrested; (3) the scope of the permissible search could extend beyond the front room where petitioner was arrested to the two rooms where the stolen property was recovered; (4) there was no unreasonable delay in effecting petitioner's arrest, nor was the arrest a pretext for the search that followed; and (5) the arresting officer had sufficient information to obtain a search warrant, but there was no reason to invalidate the search merely because he failed to do so; moreover, under the peculiar circumstances of the present case the obtaining of a search warrant would have required an unreasonable amount of time and effort on his part.

(1) The Arrest Was Lawful

Petitioner at page 28 of his Opening Brief concedes, as he must, that the facts known to Officer Del Coma on September 13, 1965, afforded the officer probable cause to arrest petitioner for the burlary of The Money Vault. The evidence constituting probable cause is set forth in subsection (a) of respondent's Statement of the Proceedings and clearly met the test of being within the arresting officer's knowledge or based upon reasonably trustworthy information, and being sufficient in itself to warrant a man of reasonable caution in the belief that the offense of burglary had been committed by petitioner.

Ker v. California, 374 U.S. 23, 34-35 (1963); *Brinegar v. United States,* 338 U.S. 160, 175-76 (1949).

(2) The Time, Place, Objective and Manner of Conducting the Search Were Reasonable

As has been shown in the preceding subargument, both the common law and the decisions of this Court interpreting the Fourth Amendment have sanctioned the search of premises under the control of an arrestee if the objective of the search is deemed reasonable, as is the recovery of stolen property.

Ker v. California, 374 U.S. 23, 34-35 (1963);

United States v. Rabinowitz, 339 U.S. 56, 63-64 (1950);

Boyd v. United States, 116 U.S. 616, 623 (1886).

In support of such a search it is significant, as Mr. Justice Fortas had recent occasion to note, that the fruits of a crime "are an object of the pursuit or arrest of the suspect, and should be restored to their true owner." *Warden v. Hayden,* 387 U.S. 294, 311 (1967) (concurring opinion).

The record indicates unequivocally that both in terms of time and place the search was a reasonable incident of the arrest. The search of the residence occurred immediately following petitioner's arrest inside the residence. (R. 202, 231.) An otherwise reasonable search incident to arrest is not rendered invalid solely because a dwelling place rather than a business premises is the subject of the search. *Ker v. California,* 374 U.S. 23, 41-42 (1963); *Harris v. United States,* 331 U.S. 145, 151 (1947). It is also beyond dispute that the objective of the September 13th search was proper, the search being directed toward recovery of the coins and coin paraphernalia which had been stolen from The Money Vault. (R. 202, 204.)

Officer Del Coma's conduct did not consist of merely formal or perfunctory compliance with the bare essentials of the Fourth Amendment's mandate of reasonableness. Instead of relying solely on his own expertise as a burglary detective of several years' experience (R. 114, 201) in evaluating the information which he had gathered concerning The Money Vault burglary, he submitted several reports to Deputy District Attorney Robert Law before effecting the September 13th arrest. (R. 378-79.) After numerous conversations with Mr. Law, Officer Del Coma proceeded to contact Mr. Parsons to acquire still more evidence connecting petitioner to the burglary. (R. 379-82.)

Thereafter Officer Del Coma filed a complaint seeking the issuance of a warrant of arrest by a judge of the Municipal Court. The officer did not take this action because of any erroneous view on his part that the law required it; it was his general practice to do so whenever time permitted. (R. 229.) His testimony, uncontradicted at the trial, was that there was no intentional delay or maneuvering on his part regarding execution of the warrant. (R. 237.) That ultimately on appeal the warrant was held defective despite its compliance with procedure which had been sustained by the California courts for many years, does not detract in any way from the officer's good faith or the reasonableness of his search.

Taking care to follow the practice of his department, the City of Orange Police Department, Officer Del Coma also contacted the Police Department of the City of Santa Ana, in whose jurisdiction petitioner's residence was located, and had two officers from that department accompany him in executing the warrant of

arrest.[16] (R. 201.) Although less exemplary procedure has been sustained by this Court on past occasions (*see Ker v. California*, 374 U.S. 23, 37-41 [1963]), Officer Del Coma knocked on the door of the house, identified himself to the person who answered (petitioner's wife), asked whether he and the other officers could enter (R. 202), and treated petitioner with the utmost courtesy. Petitioner was informed of the warrant, was shown it to read and examine, and was advised of his rights. (R. 202, 231.) Although the law authorized the officer to search incident to the arrest, petitioner was still asked whether he had any objections to a search. When petitioner voiced his preference that the officer not search, petitioner was advised that a search was permissible pursuant to a lawful arrest. (R. 202.)

The manner of conducting the search itself was restrained and designed to minimize the invasion of petitioner's privacy. Petitioner's wife was asked to accompany Officer Del Coma in his attempt to retrieve the coins missing from The Money Vault. (R. 202.) This was done for the express purpose of having her,

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[16]Ironically, in his supplemental reply brief in the California Court of Appeal, petitioner argued that the two Santa Ana officers did not have probable cause to arrest petitioner for The Money Vault burglary and that their mere presence at the scene of the arrest was insufficient to cure the alleged irregularity in the arrest arising from the fact that petitioner's residence was outside Officer Del Coma's jurisdiction. *Cf.* California Penal Code section 830.1, enacted in 1968, which provides that a peace officer's authority extends to any place in the State as to any offense which he has probable cause to believe was committed in his jurisdiction. Under the law applicable at the time of the present arrest, *see People v. Martin*, 225 Cal. App. 2d 91, 93-95 (1964) [36 Cal. Rptr. 924, 926-27] (hearing denied by the California Supreme Court), the presence of the Santa Ana officers validated the arrest.

rather than the officer, open the drawers and move their contents. This she did without hesitation. There was no ransacking of any portion of the premises. (R. 203-04, 232, 238-39.) Only coins that appeared to have been taken from The Money Vault were retrieved by Officer Del Coma; many others were left at the premises.[17] (R. 204.) Other than a quantity of razor blades which, according to petitioner, were part of a "transaction, in payment for a coin deal" (R. 218), only coins and coin paraphernalia were seized. (*See* App. B to Resp. Br.) (This "coin deal" of course could have involved The Money Vault burglary.) Petitioner's wife apparently explained the nature of some of the items observed on the premises. (R. 239.) The coins that were taken were placed into two canvas satchels with which she provided Officer Del Coma. (R. 204-05, 223-24, 227-28.) An inventory of the seized coins was subsequently compiled in petitioner's presence, and petitioner was given a signed copy. (R. 205, 224.)

The search took only forty-five minutes. Because of his commendable desire not to linger with petitioner at the house under the circumstances, the officer proceeded "as quickly as possible." (R. 243.)

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[17]The question arises, how were some of the Pulatis' coins and medals seized if the officer was taking care to recover only coins that appeared to be from The Money Vault burglary. Considering the large number of coins seized and the small proportion identified by the Pulatis (*see* App. B to Resp. Br.), the answer is clear. Several boxes containing coins, as well as tubes, packages, and other containers, were recovered by the officer. (*See* App. B. to Resp. Br.) Most of the seized coins and medals were inside plastic tubes and cardboard boxes. (R. 205, 223, 227-28.) Officer Del Coma did not have to linger in the house with petitioner while the officer sorted through the large quantity of stolen property, coin by coin. If a box appeared to contain coins from The Money Vault, it was proper to seize it and thereby, of necessity, risk taking a few coins and medals which might be intermingled with The Money Vault coins.

It is fully understandable that the record does not indicate expressly whether or not Mr. Slocum subsequently was able to identify any of the coins recovered during the search as among those taken from The Money Vault. As a dealer, his stock was continuously changing. The record, as well as an examination of the exhibits themselves, suggests that even the rarer coins taken from The Money Vault were not readily identifiable in the sense of being distinguishable from other rare specimens of the same denomination.[18] Mr. Slocum specialized in Washington quarters, quarters were taken, and there were 145 Washington quarters among the coins recovered at petitioner's residence. A quantity of silver dollars was among the coins taken from The Money Vault, and the coins recovered at petitioner's residence included 28 silver dollars. (R. 89, 177; App. B to Resp. Br.)

That some of the coins recovered in the search were later identified as having been stolen during the Pulati burglary did not detract from the reasonableness of the search.

> ". . . When an article subject to lawful seizure properly comes into an officer's possession in the course of a lawful search it would be entirely without reason to say that he must return it because it was not one of the things it was his business to look for. See Harris, supra, 331 U.S., at 154-155."
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> *Abel v. United States,* 362 U.S. 217, 238 (1960).

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[18](R. 175-77; *compare* R. 272-74, 276-87, 296.) An exception is the somewhat uniquely marked 1877-S trade dollar taken from The Money Vault and sold to a coin dealer two months after the burglary, subsequent to the search of petitioner's residence. (R. 97, 108-11, 160-62, 306-07.)

(3) The Scope of the Search Was Reasonable

What then does petitioner find *unreasonable* in this search? He characterizes as "ransacking" the careful and restrained efforts of Officer Del Coma to retrieve the thousands of dollars of coins, comprising one-half to three-fourths of Mr. Slocum's inventory (R. 107), which the officer reasonably believed to be secreted at petitioner's house. Petitioner apparently considers the scope of the search sufficiently broad to render the search automatically invalid.

This Court has stated with respect to such a claim:

> "What is a reasonable search is not to be determined by any fixed formula. The Constitution does not define what are 'unreasonable' searches and, regrettably, in our discipline we have no ready litmus-paper test. The recurring questions of the reasonableness of searches must find resolution in the facts and circumstances of each case. *Go-Bart Co. v. United States,* 282 U.S. 344, 357. Reasonableness is in the first instance for the District Court to determine. . . ."
>
> *United States v. Rabinowitz,* 339 U.S. 56, 63 (1950).

The objective of the present search to recover stolen property being reasonable and the circumstances attending the conduct of the search being reasonable, was the search rendered constitutionally invalid solely because the property was recovered in a room other than that in which petitioner was arrested?

Once it is established that Officer Del Coma had the right to arrest petitioner and, *in order to recover stolen property,* to search the area under petitioner's

control, it seems mere formalism to urge that such a legitimate search for stolen property became unreasonable once it extended beyeond the room where the arrest was effected to the bedroom and the sewing room where the stolen coins were recovered.

The permissible scope of a search must certainly be defined in light of its legitimate objective rather than on the basis of arbitrary geographical distinctions. This Court has recognized that " 'Limitations upon the fruit to be gathered tend to limit the quest itself.' . . .". *Terry v. Ohio*, 392 U.S. 1, 29 (1968). Since the arresting officer was not free to, nor inclined to, conduct a general and exploratory search for evidence of offenses other than the burglary for which he was arresting petitioner, the scope of search consistent with his legitimate objective limited the search to those areas where the stolen coins would likely be secreted.

A search intended to recover stolen property of this type had to be of this scope. Such scope was "essential to fulfill the purpose of the exception" of searches incident to arrest to the rule that ordinarily searches are to be effected by means of search warrants. "The search for and seizure of fruits are, of course, justifiable on independent grounds: The fruits are an object of the pursuit or arrest of the suspect, and should be restored to their true owner." *Warden v. Hayden*, 387 U.S. 294, 310-11 (1967) (concurring opinion of Mr. Justice Fortas), cited in *Terry v. Ohio*, 392 U.S. 1, 19, 26, 29 (1968). The objective of restoration of the stolen coins to Mr. Slocum would not be served by arbitrarily restricting Officer Del Coma's search to the particular room fortuitously fixed as the place of arrest.

The imposition of such a restriction would be a novel departure from the past decisions of this Court upon which the State courts have placed much reliance.

See e.g., Warden v. Hayden, 387 U.S. 294, 298-99 (1967);

Harris v. United States, 331 U.S. 145, 152 (1947);

Marron v. United States, 275 U.S. 192, 198-99 (1927).

In *Harris,* the Court stated:

> *"Nor can support be found for the suggestion that the search could not validly extend beyond the room in which petitioner was arrested.* . . . Petitioner was in exclusive possession of a four-room apartment. His control extended quite as much to the bedroom in which the draft cards were found as to the living room in which he was arrested. The canceled checks and other instrumentalities of the crimes charged in the warrants *could easily have been concealed in any of the four rooms of the apartment.* Other situations may arise in which the nature and size of the object sought or the lack of effective control over the premises on the part of the persons arrested may require that the searches be less extensive. But *the area which reasonably may be subjected to search is not to be determined by the fortuitous circumstance that the arrest took place in the living room as contrasted to some other room of the apartment.*
>
> ". . . The same meticulous investigation which would be appropriate in a search for two small canceled checks could not be considered reasonable

where agents are seeking a stolen automobile or an illegal still. . . ." (Emphasis added.)

Harris v. United States, 331 U.S. 145, 152 (1947).

See also:

Beck v. Ohio, 379 U.S. 89, 91 (1964);

Ker v. California, 374 U.S. 23, 41-43 (1963).

The scope of the search upheld by this Court in *Harris* of course dwarfs the present search. In *Harris* the officers without a search warrant searched the entire apartment extensively and intensively, through bed linen and clothes and underneath carpets, for five hours.

Harris v. United States, supra at 149; *see also supra* at 183-84 (dissenting opinion of Mr. Justice Murphy).

Cf. Kremen v. United States, 353 U.S. 346 (1957).

The present search took approximately forty-five minutes and was as quick a search as Officer Del Coma considered possible under the circumstances. (R. 243-44.) The "basic, direct search" was made in the master bedroom and a second bedroom which was used as a sewing room. (R. 231.) Apparently all the seized items were recovered from these two rooms. (R. 204, 223.) Only those coins and coin paraphernalia which appeared to have been stolen from The Money Vault were seized, except for some razor blades which according to petitioner were part of a "coin deal" (which could possibly have involved The Money Vault burglary). (R. 204, 228; App. B. to Resp. Br.) Officer Del Coma had petitioner's wife accompany him into the

rooms, and it was she rather than he who opened drawers and moved the contents aside. There was no ransacking of any part of the premises. (R. 204, 232, 238-39.)

Petitioner incorrectly implies that the entire premises were intensively searched. Apart from the search of the bedroom and the sewing room, the "search" apparently consisted only of *looking into* the child's room, the attic opening, and the garage and *glancing around* the front room. There appears to have been no prying into hidden places, nor any seizure, in these areas. (R. 231-32, 239-40.) The only area, other than the two rooms where stolen property was recovered, where the record indicates there was any looking into places not open to the eye was perhaps the kitchen, where Officer Del Coma looked into several cupboards. Again the record does not indicate that anything was recovered from this area. (R. 231-32.) As for the inspection of the garage, Officer Del Coma knew that petitioner had tools, including a lathe, which he used to refinish coins. It was reasonable to expect that these tools as well as stolen coins might be in the garage. (R. 190, 191-92, 229-30.)

Respondent submits that the arresting officer had the right to search for the coins stolen from The Money Vault in all parts of petitioner's residence where he searched, since any of these places was a likely location of the stolen property. But even were this not the case, petitioner can predicate his claim of error only on the search of the two rooms where evidence, ultimately used against him at the trial, was recovered.

See Frisbie v. Collins, 342 U.S. 519 (1952);
People v. Marsh, 58 Cal. 2d 732, 746 (1962) [376 P.2d 300, 309].

It is respondent's position that to invalidate the present search merely because evidence received against petitioner at the trial was recovered in the bedroom and the sewing room, while petitioner's arrest took place in the front room, would be a novel departure from the past decisions of this Court and would not serve to further any meaningful policy considerations affecting searches incident to lawful arrests. Additionally, the imposition of such limitations upon the scope of permissible search would pose continual problems of definition and distinction. If the scope of reasonable search is to be limited to a particular circumference around the suspect, or to the room where the arrest takes place, how large may the circumference or the room be? What of hallways, and of a room that actually is no more than an area divided by a partition from the remainder of the room?[19] *See United States v. Rabinowitz*, 339 U.S. 56, 79 (1950) (dissenting opinion of Justice Frankfurter). It is doubtful that any fixed formula will achieve the necessary balance, between protection of the individual from unreasonable invasion of his privacy and the need for effective law enforcement techniques, which has been achieved by the current test of reasonableness under "the facts and circumstances—the total atmosphere of the case." *United States v. Rabinowitz, supra* at 66.

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[19]One commmentator states that there is no middle ground, rooted in principle, between two logical points of termination for search incident to arrest—either the person of the suspect and the objects within his reach, or alternatively the entire dwelling. J. Landynski, Search and Seizure and the Supreme Court 115 (1966). Some decisions have, however, imposed the somewhat arbitrary restriction that the police may search one room, but not more. *See State v. Adams,* 103 W. Va. 77 (1927) [136 S.E. 703, 704]; *State v. Rebasti,* 306 Mo. 336 (1924) [267 S.W. 858, 860].

(4) The "Delay" in Arresting Petitioner Was Not Unreasonable

Petitioner contends, at pages 28-29 of his Opening Brief, that the September 13th arrest was deliberately delayed and maneuvered so as to enable the arresting officer to search petitioner's residence, and that the arrest was therefore no more than a pretext for the search.

All the evidence in the record touching upon this point indicates that this was decidedly not the case. There is nothing more than petitioner's speculation upon which to base this claim of bad faith on the part of the officer, and under such circumstances Officer Del Coma must be presumed not to have been motivated by the considerations ascribed to him by petitioner.[20] In *Abel v. United States,* 362 U.S. 217, 225-28 (1960), this Court similarly found the record to be barren ground for a claim of bad faith on the part of the agents who arrested the defendant and searched his residence.

The following evidence in the record refutes petitioner's unsupported claim that the arrest was deliberately delayed and was a mere pretext for the search of petitioner's residence.

The burglary of The Money Vault took place on the night of August 14, 1965. (R. 245.) It was a few days after the burglary that petitioner made his suspicious statements to Mr. Slocum, the owner, and to Mr. Am-

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[20]The State "is entitled to the benefit of a presumption of proper police conduct," *Der Garabedian v. United States,* 372 F.2d 697, 699 (n. 1) (5th Cir. 1966), and "in the absence of evidence to the contrary it is presumed that the officers acted lawfully." *People v. Maddox,* 46 Cal. 2d 301, 304 (1956) [294 P.2d 6, 8], *cert. denied,* 352 U.S. 858 (1956). *See also Chappell v. United States,* 342 F.2d 935, 939 (n. 5) (D.C. Cir. 1965).

brose. (R. 105-06, 186-89, 230.) On August 25th Officer Del Coma interviewed petitioner at the police station. Petitioner was not in custody at the time. (R. 256-57, 265, 386.) The meeting between petitioner, Charles Hamburger, attorney Jones, and Officer Del Coma took place on August 30th. (R. 258-59, 343.) Meanwhile Officer Del Coma had submitted several reports to Deputy District Attorney Robert Law between August 15th and August 30th. (R. 378-79.) On August 30th Mr. Law requested that the officer obtain more evidence by contacting Mr. Parsons, to whom petitioner was reported to have admitted committing the burglary. (R. 380-82.) During the first week of September Officer Del Coma verified that petitioner had made the aforementioned admission to Mr. Parsons. (R. 195-96, 230.) During the early part of September the officer presumably learned of another telephone conversation between Mr. Slocum and petitioner wherein the latter had asked whether Mr. Slocum had ever thought "someone was trying to help you instead of hurt you by not cleaning you out completely." (R. 106-07.) During this period the officer also had several contacts with Hamburger regarding the stolen coins and received some of them from the Torrance Police Department, which had seized them in attorney Jones' office. (R. 268-69, 271.)

"It is as beneficial to the falsely accused, as it is detrimental to the lawbreaker, to have as complete an investigation as possible before determining whether to deprive the suspect of his freedom." *People v. Chrisman,* 256 Cal. App. 2d 425, 448-49 (1967) [64 Cal. Rptr. 733, 749] (hearing denied by the California Supreme Court.)

Clearly then Officer Del Coma did not unreasonably delay the *date* of petitioner's arrest. Was the particular *hour* at which the arrest took place the result of a deliberate delay?

The warrant for petitioner's arrest was obtained by Officer Del Coma from a Municipal Court judge at 10:39 a.m. As required by California Penal Code section 814, the warrant directed that petitioner be arrested "forthwith" and brought before that court. (App. A to Resp. Br.) Officer Del Coma interpreted the word "forthwith" as "right then . . . [w]hen practical."[21] (R. 236-37.)

The time between the issuance of the warrant of arrest and its execution that afternoon was occupied as follows. Officer Del Coma returned to his department and followed customary procedure by checking the warrant into the warrant detail. An entry was made on a master card, and a warrant packet was made out by the records section. This policy was followed, except where there was a danger of immediate flight, because of "problems arising out of arrests on suspicion when there is a Warrant being secured." (R. 237-38.) The

[21] *Cf.* California Penal Code section 1529 which prescribes that search warrants command that "immediate search" be made. Section 1534 provides that the warrant "must be executed and returned to the magistrate who issued it within ten days after its date." *See also Spinelli v. United States*, 382 F.2d 871, 885-86 (8th Cir. 1967), *reversed on another ground*, 89 S.Ct. 584 (1969), and *Mitchell v. United States*, 258 F.2d 435, 436 (D.C. Cir. 1958), with reference to the requirement in Rule 41 (c)-(d), Federal Rules of Criminal Procedure, that search warrants be executed "forthwith." Rule 4, relating to warrants of arrest, does not require that they be executed forthwith or at the first opportunity. *United States v. Weaver*, 384 F.2d 879, 880-81 (4th Cir. 1967), *cert. denied*, 390 U.S. 983 (1968); *United States v. Joines*, 258 F.2d 471, 472-73 (3d Cir. 1958), *cert. denied*, 358 U.S. 880 (1958).

records section finished processing the warrant at approximately 2 p.m. that day. Presumably the department had other warrants and matters to process as well. (R. 238.)

That day Officer Del Coma was "actively engaged" in several other burglary investigations, both prior to and subsequent to 2 p.m. (R. 238.) (Officer Del Coma's monthly caseload of burglaries committed in the City of Orange ranged from a minimum of forty-five to a maximum of eighty. [R. 241.] Additionally, Officer Del Coma worked closely with the burglary detail of other police departments in the county on burglaries committed in other jurisdictions. [R. 241-42.]) Before arriving at petitioner's Santa Ana residence at approximately 4 p.m. that day, Officer Del Coma followed customary procedure in contacting the Santa Ana officers so that they could accompany him, since petitioner's residence was located in that city rather than in Officer Del Coma's jurisdiction of the City of Orange. (R. 201.)

Petitioner did not arrive until ten or fifteen minutes after the officers. (R. 231, 243.) Officer Del Coma had known the location of petitioner's place of employment as a dental technician but "had gone to the residence to keep from approaching him at his place of business to cause him any problem there." (R. 202, 223, 235-36, 237.) Obviously Officer Del Coma, being occupied with the other burglary investigations after 2 p.m., might have also felt that there would be a chance of missing petitioner at his place of employment.

Petitioner implies, at page 30 of his Opening Brief, that true concern for petitioner's well-being would have

caused Officer Del Coma to arrest petitioner in the presence of his employer instead of in the presence of petitioner's wife and child. Petitioner's point is debatable, and certainly the officer cannot be held to Solomonic judgment on this point. Suffice it to say that it was probably preferable from petitioner's standpoint to have the arrest take place in the presence of his wife, who would certainly learn of the arrest in any event, than in the presence of petitioner's employer, who, since petitioner was very soon released on bail (R. 240), would probably learn of the arrest only in the event the case went to trial. *See Katz v. United States,* 389 U.S. 347, 350 (n. 1) (1967), quoting *Griswold v. Connecticut,* 381 U.S. 479, 509 (1965) (dissenting opinion of Mr. Justice Black). Moreover, the record indicates that petitioner was treated with the utmost courtesy and was not subjected to any personal indignity before his wife or elsewhere.[22]

Officer Del Coma testified at the trial that "there was no particular delay on my part." He specifically denied delaying execution of the warrant of arrest until the time of petitioner's return home "so that the arrest could be made at his home and used as a pretense to search his home." (R. 237.)

In the face of the aforementioned uncontradicted evidence and in the absence of any evidence supporting petitioner's claim of deliberate delay and "maneuvering" on the part of the arresting officer, it is clear that the arrest was not a pretext for an exploratory search of petitioner's residence.

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[22]It is clear that the officer could have searched those portions of the premises where petitioner worked which were under petitioner's control, had the arrest been made at petitioner's place of employment. *See Mancusi v. DeForte,* 392 U.S. 364, 368-69, 370-71 (1968).

Officer Del Coma was "not required to neglect all other investigatory and enforcement activity in order to execute [the] arrest warrant." *United States v. Weaver,* 384 F.2d 879, 880 (4th Cir. 1967), *cert. denied,* 390 U.S. 983 (1968). Just as petitioner "had no constitutional right to be arrested" at an earlier, more convenient time, *Hoffa v. United States,* 385 U.S. 293, 310 (1966), or at the first opportunity, *United States v. Joines,* 258 F.2d 471, 472-73 (3d Cir. 1958), *cert. denied,* 358 U.S. 880 (1958), he had no right to be arrested at a particular place (such as the dental establishment at which he worked) where the officer would be least likely to find incriminating evidence as the result of a search incident to the arrest.

In view of the absence of any evidence in the record to indicate that Officer Del Coma's "purpose in entering was to search . . ., and not to arrest petitioner," *cf. Jones v. United States,* 357 U.S. 493, 500 (1958), it cannot be assumed that the officer acted in bad faith and used the arrest as a mere pretext for an exploratory search. *Abel v. United States,* 362 U.S. 217, 225-28 (1960). On the contrary the record establishes that until the date of arrest Officer Del Coma was acquiring more and more information indicating petitioner's probable guilt of the burglary, that the circumstances present on the day of the arrest made a late-afternoon arrest at petitioner's residence the most logical and convenient choice, and that the officer's secondary purpose, to retrieve the thousands of dollars of coins missing from The Money Vault, was perfectly legitimate and in accordance with lawful procedures sanctioned by this Court.

(5) The Arresting Officer's Failure to Obtain a Search Warrant When It Would Have Been Possible, but Particularly Burdensome, to Do So Did Not Invalidate the Impeccable Search

The present case affords a graphic illustration of the inadequacy and inflexibility of the short-lived rule of *Trupiano v. United States,* 334 U.S. 699 (1948), disavowed in *United States v. Rabinowitz,* 339 U.S. 56 (1950), that failure to obtain a search warrant when it would have been practicable to do so will invalidate a *perfectly lawful* search. Respondent submits that re-adoption of the *Trupiano* rule is not required by the Constitution and is undesirable from the standpoint of sound judicial policy. However, as will be shown below, the present search would pass muster even under the stringent *Trupiano* rule, if the "practicability" requirement were given an interpretation consistent with this Court's stated concern with "the practical demands of effective criminal investigation and law enforcement." *Elkins v. United States,* 364 U.S. 206, 222 (1960).

It is petitioner's position, stated at page 29 of his Opening Brief, that "the failure of the officer to antecedently justify either the arrest or search is reason, standing alone, for reversal under this Court's cases," in the absence of exigent circumstances rendering it impossible to obtain a warrant.

Admittedly the record in the present case indicates an absence of exigent circumstances in that Officer Del Coma was not presented with any *emergency situation* such as immediate threat of evidence being destroyed, secreted, or otherwise disposed of; there was no likelihood of flight by petitioner, and petitioner presented

no particular danger to the officer. However, there were *other* circumstances in light of which it would have imposed an unreasonable burden on Officer Del Coma in terms of time and effort to condition his right to recover the stolen coins upon the obtaining of a search warrant. These difficulties were such as to eliminate as a *practical* possibility the obtaining of a search warrant.

It must be recalled, as indicative of the good faith of Officer Del Coma, that he submitted numerous reports to Deputy District Attorney Robert Law, had several conversations with him, and complied with Mr. Law's suggestion that the officer obtain additional evidence before seeking the issuance of a warrant for petitioner's arrest. (R. 378-82.) On appeal the California Supreme Court held the warrant to be defective because the complaint upon which it issued was deemed to contain inadequate factual averments. Significantly, the complaint was typical of complaints used in California up to that time, and in invalidating this type of complaint by its decision in the present case and a companion case, the California Supreme Court reinterpreted California Penal Code sections 806, 813, and 952 in light of recent decisions of this Court and thereby changed the law upon which Officer Del Coma and other law enforcement officers had relied for many years.

People v. Sesslin, 68 Cal. 2d 418, 425-26 (1968) [439 P.2d 321, 326-27] (R. 407-09);

People v. Chimel, 68 Cal.2d 436, 440 (1968) [439 P.2d 333, 335] (R. 421.)

Furthermore, on cross-examination by petitioner's counsel, Officer Del Coma testified, "Whenever pos-

sible I attempt to secure a Warrant prior to making an arrest; if the matter of investigation proceeds along the lines that I didn't have time to get one, I will proceed on reasonable cause." (R. 229.)

Initially it must be noted that in conducting the search as an incident of the September 13, 1965, arrest of petitioner, Officer Del Coma was entitled to rely upon the rule of many years' standing that "searches turn upon the reasonableness under all the circumstances and not upon the practicability of procuring a search warrant, for the warrant is not required." *United States v. Rabinowitz,* 339 U.S. 56, 65-66 (1950), cited to this effect with approval in *Cooper v. California,* 386 U.S. 58, 62 (1967), and *Ker v. California,* 374 U.S. 23, 41 (1963). *See also Terry v. Ohio,* 392 U.S. 1, 19 (1968).

Secondly, it is essential to examine the circumstances confronting Officer Del Coma when he signed under oath the complaint upon which a judge of the Municipal Court issued the warrant for petitioner's arrest. Officer Del Coma had taken the trouble to obtain an arrest warrant—not because he thought that he "needed" it, but merely out of a commendable preference on his part for this mode of procedure. (R. 229.) Why then did Officer Del Coma not simultaneously execute an affidavit upon which a search warrant could issue under California Penal Code sections 1523-29?

The record indicates that Officer Del Coma had sufficient information to obtain a search warrant.

Petitioner concedes at page 28 of his Opening Brief, as he must, that the officer had probable cause to believe that petitioner had committed the burglary of The Money Vault; the facts known to the officer prior

to September 13, 1965, included petitioner's participation in the negotiations for return of the stolen coins and petitioner's significant admissions to the officer, as well as to Mr. Slocum, Mr. Ambrose, and Mr. Parsons prior to and subsequent to the burglary of The Money Vault.

The information known to Officer Del Coma clearly indicated the likelihood that the stolen coins were at petitioner's residence: (1) petitioner had, by his own admissions, established his identity as the person who had broken into The Money Vault and stolen the coins; (2) petitioner was known to be a coin collector (R. 97, 104, 191, 196, 230); (3) it is common knowledge that coin collectors almost invariably keep their collection at home; (4) furthermore, it was known that petitioner was a dental technician and that he was not self-employed (R. 235-36, 239); hence it was highly unlikely that petitioner would keep the bulky fruits of The Money Vault burglary at his place of employment; (5) between two and three weeks after the burglary, petitioner participated in negotiations in which he "discussed the possibility of returning the coins from the burglary for a civil release," thereby indicating the likelihood that the coins were still in his possession. (R. 264.)

A search warrant could properly have issued ordering the seizure, at petitioner's residence, of the particular coins stolen from The Money Vault, since a search warrant may issue "so long as 'there was substantial basis for [the magistrate] to conclude that [the stolen goods] were probably present.'" *Aguilar v. Texas*, 378 U.S. 108, 111 (1964), quoting from *Jones v. United States*, 362 U.S. 257, 271 (1960).

See also Camara v. Municipal Court, 387 U.S. 523, 535 (1967). The standard is not limited to those situations where either the officer or his source of information has actually viewed the contraband or stolen goods on the premises to be searched.

See United States v. Jennings, 235 F. Supp. 551, 552-53 (D.D.C. 1964), *cert. denied,* 384 U.S. 943 (1966);

United States v. Egorov, 222 F. Supp. 862, 865-67 (E.D. N.Y. 1963).

In evaluating the facts known to Officer Del Coma together with the inferences which he could logically and reasonably deduce therefrom, it is apparent that everything pointed to the likelihood of the stolen coins being at petitioner's residence and nothing suggested their being any place else. "In dealing with probable cause . . . as the very name implies, we deal with probabilities. These are not technical; they are *the factual and practical considerations of everyday life* on which reasonable and prudent men, not legal technicians, act." (Emphasis added.) *Brinegar v. United States,* 338 U.S. 160, 175 (1949). *See also Spinelli v. United States,* 89 S. Ct. 584, 590-91 (1969).

The likelihood that the coins were at petitioner's residence at the time of his arrest also gave the arresting officer probable cause to believe that petitioner was committing in his presence the felony of concealing and withholding stolen property. Cal. Penal Code § 496.

The recent case of *People v. Alvarado,* 255 Cal. App. 2d 285, 290-91 (1967) [62 Cal. Rptr. 891, 894-95], illustrates that the California courts, properly, would have issued a search warrant to search petition-

er's residence for the fruits of The Money Vault burglary upon an affidavit setting forth the foregoing information known to Officer Del Coma. *Alvarado* upheld the issuance of a search warrant authorizing a search of residences of two defendants who were being held in custody for robbery, upon an affidavit describing the robbery, the fact that one or more weapons used in the course of the robbery were missing at the time of the arrest shortly after the robbery, and that there was enough time for the two suspects to have gone to their respective residences between the time of the robbery and the time of arrest.

In the present case, as in *Alvarado,* there was no *direct* evidence of the missing items being at the place to be searched, but the circumstances pointed even more compellingly to the residence as the probable location of the items sought.

Possible as it thus would have been for Officer Del Coma to obtain a search warrant, the peculiar circumstances of the present case presented problems which would have rendered it highly impractical to do so. These considerations loom significant in evaluating a search under the reasonableness standard. *Camara v. Municipal Court,* 387 U.S. 523, 533, 539 (1967).

As will appear from the following circumstances, the time and effort required to draw up an adequate search warrant affidavit in the present case would have been enormous. (Also the date of the search might have been considerably delayed, although time was not clearly of the essence here.)

On the date of The Money Vault burglary, Mr. Slocum had between twenty thousand and thirty thousand individual coins in the shop for sale. (R. 112.)

He was unable to state the exact number of coins that was missing after the burglary, but approximately one-third, or 6,600 to 10,000 coins, were taken. (R. 133, 145-46.) The theft reduced his inventory from a wholesale numismatic value of $23,000 to somewhere between $2,000 and $3,000. (R. 96-97, 133, 146-47.) Sometime during the first two weeks of September, 1965, an unspecified number of the missing coins was retrieved from attorney Jones' office by the police. During this period Officer Del Coma also received information from Hamburger regarding what petitioner had proposed to do with his own portion of the coins. (R. 268-69, 271.)

From the fact that the return of the coins retrieved in attorney Jones' office necessitated only what was described as "a couple of changes in the list" of missing coins prepared by Mr. Slocum for the insurance company (R. 153), it is apparent that the bulk of the coins stolen from The Money Vault was still believed secreted at petitioner's residence.

Would it have been sufficient for Officer Del Coma in drawing up an affidavit in support of a search warrant to describe the property to be seized simply as "*certain coins and coin paraphernalia* taken from The Money Vault during the burglary which occurred on the night of August 14, 1965"? In view of this Court's decisions interpreting the Fourth Amendment, the answer is unequivocally no.

The Fourth Amendment requires that "no warrants shall issue, but upon probable cause, supported by oath or affirmation, and *particularly describing* the . . . things to be seized."

More than thirty years ago it was settled that:

> "The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant."
>
> *Marron v. United States*, 275 U.S. 192, 196 (1927).

Thus in *Marron* this Court held that a search warrant authorizing the seizure of "intoxicating liquor and articles for their manufacture" did not permit the officers to take a ledger and certain bills into their possession, since the latter items were not specifically mentioned in the warrant. *Supra* at 193-94, 198. Significantly, however, the Court upheld the seizure of the ledger and bills, which were found inside a closet, on the ground that the officers had probable cause to arrest the defendant on the premises and therefore the "right without a warrant contemporaneously to search the place in order to find and seize the things used to carry on the criminal enterprise." *Supra* at 199.[23]

Only a few months prior to the present search this Court, in a unanimous opinion in *Stanford v. Texas*,

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[23] *See also James v. United States*, 191 F.2d 472, 473-74 (D.C. Cir. 1951), *cert. denied*, 342 U.S. 948 (1952), where the defendants challenged the reception in evidence of certain unusual coins because the coins were not described in the search warrant. The court held, "We need not stop to consider the point because, during the search incident to the arrest, the officers lawfully seized the coins as fruits of crime, regardless of whether the search warrant, standing alone, would have justified the seizure."

379 U.S. 476, 485-86 (1965), quoted the foregoing language from the *Marron* opinion and again gave an exacting interpretation of the Fourth Amendment's requirement that items to be seized be particularly described, although the Court's holding was impelled by the fact that much of the property to be seized was literary material. The description which was held inadequate listed "books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas."

The requirement of a search warrant description sufficiently detailed to distinguish the items to be seized from other items of the same general character not subject to seizure[24] would have been particularly demanding in the present case since petitioner was known to be a coin collector (R. 97, 104, 191, 196, 230) and presumably, therefore, to have his own collection on the premises. The thousands of missing coins to be seized would have had to be described, in many instances individually rather than by container, with sufficient particularity to distinguish them from other numismatic items, perhaps of the same type and denomination, which might be found in petitioner's own collection on the premises.[25]

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[24]In the case of non-contraband property, a "rule of thumb is: The description must be definitive enough to enable the seizing officer to distinguish the property, or class of property, to be seized from like property which may be found on the premises." R. Davis, Federal Searches and Seizures 72 (1964).

[25]More particularlity of description is required of stolen property to be seized than of contraband, such as illegally possessed liquor, to which no possessory interest can be held. *Cf. Steele v. United States, No. 1*, 267 U.S. 498, 504 (1925). "In warrants for search and seizure of stolen goods particularity of description is necessary to the protection of the citizen from the seizure of

(This footnote is continued on the next page)

Furthermore, Officer Del Coma would have had to recite in his affidavit *the basis* for his belief that the particular specimens to be seized at petitioner's residence were coins stolen from The Money Vault rather than other specimens of what, for the most part, appeared to be fungible items. It would probably not have been enough in this regard for Officer Del Coma simply to recite that Mr. Slocum had imparted this belief to him. It probably would have been essential for Officer Del Coma to set forth individually the specific characteristics of the coins to be seized such as whether particular coins were in mint condition or, alternatively, marked by having been in circulation, and if so, in what manner and to what degree. An adequate description might also have necessitated identifying individual coins with particular coin folders, tubes, and other containers.

Finally, the inadequacy in the present case of the search warrant procedure is compounded by the fact that, because of the interchangeable nature of coins, it is usually difficult if not impossible to distinguish one specimen from another of the same denomination and condition but that identification of an *aggregate* of coins becomes easy by virtue of the unlikelihood of the same combination or collection of diverse coins being found in possession of another collector.[26]

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other goods of the same general character, his lawful property." *Elrod v. Moss*, 278 F. 123, 129 (4th Cir. 1921). Officers are advised that if the property to be seized "is *non-contraband* then you must very carefully identify and describe it." (Emphasis by the author.) United States Department of Justice, *Handbook on the Law of Search and Seizure* 3 (1967).

[26]As Mrs. Pulati testified, "a roll of nickels is just a roll of nickels unless it had my name on it" (R. 287) or was identifiable by virtue of its packaging, etc. (R. 272-76, 286.) But if,

In the present case it would have been very difficult to reflect in a search warrant affidavit this intangible element in the process of identification. *Where a search warrant is used,* "[a]s to what is to be taken, nothing is left to the discretion of the officer executing the warrant." *Marron v. United States,* 275 U.S. 192, 196 (1927). Yet, despite the "traditional failure to recognize the existence and importance of police discretion," W. LaFave, Arrest: The Decision to Take a Suspect Into Custody 64 (1965), the present situation illustrates graphically the need for recognition of limited police discretion in effecting arrests and searches and seizures.

It is apparent that the obtaining of a valid warrant to search for and seize the coins in question would have been an extremely difficult task in light of the California courts' interpretation of the constitutional requirement that property to be seized be described with particularity. In *Aday v. Superior Court,* 55 Cal. 2d 789, 795-96 (1961) [362 P.2d 47, 51], the California Supreme Court had occasion to interpret the mandate of probable cause and particularity of description for search warrants, contained in Article I, section 19, of the California Constitution (which repeats the Fourth Amendment almost verbatim) and in California Penal Code sections 1525 and 1529. In a unanimous opinion the court upheld the warrant's description, by title, of

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for example, quantities of 2¢ and 20¢ pieces are found in combination with quantities of Mercury dimes, Indian head nickels, Peace dollars, and a complete 71-coin set of uncirculated Jefferson nickels (*see* App. B to Resp. Br.) and such items had comprised the entire collection that had been stolen, the inference would be extremely strong that the coins retrieved were the stolen specimens and that both persons had not by chance duplicated exactly their respective collections, even if the particular coins involved were common denominations.

two novels alleged to be obscene but held that the eighteen other categories of described property (which included such non-literary items as checks, sales records, customers' orders, vouchers, ledgers, stockholder records, etc.) did not meet the constitutional standard of specificity.

The issue whether the absence of a valid warrant rendered the present search unlawful is treated in Petitioner's Opening Brief as if it were a question dependent upon legal abstractions instead of upon the factual setting of the particular search.

At page 21 *et seq.* of his Opening Brief, petitioner has attempted to reconcile this Court's decisions dealing with the extent to which a search may properly be made without a warrant following a lawful arrest, a courageous act on petitioner's part in the face of the conclusion of Justice Frankfurter, writing for the Court in *Abel v. United States,* 362 U.S. 217, 235 (1960), that the "several cases on this subject in this Court cannot be satisfactorily reconciled. The problem has, as is well known, provoked strong and fluctuating differences of view on the Court." Petitioner's attempted reconciliation of the cited cases, which include both *Trupiano v. United States,* 334 U.S. 699 (1948), and *United States v. Rabinowitz,* 339 U.S. 56 (1950), overruling *Trupiano,* leads him to the conclusion that no search will be approved for which a search warrant could not have been obtained. (Pet. Op. Br. pp. 7, 26.)

Petitioner seems to suggest that the search incident to his arrest stands on weaker ground because the State courts found the arrest warrant defective, upholding the arrest on the basis of probable cause apart from

the warrant. (Pet. Op. Br. p. 29.) This contention flies in the face of the well-settled rule that the validity of a search incident to an arrest does not depend upon the arrest being under authority of an arrest warrant. *Ker v. California,* 374 U.S. 23, 41 (1963), and cases there cited. *See also Abel v. United States,* 362 U.S. 217, 236 (1960); *Trupiano v. United States,* 334 U.S. 699, 705 (1948). There does not seem to be any meaningful basis for distinguishing in this regard between searches incident to these two types of arrest, since probable cause to arrest without a warrant and probable cause upon which an arrest warrant may issue are both concerned with something apart from what is required to obtain a search warrant—probable cause to believe that the specified property is on the premises to be searched. (*See* Pet. Op. Br. p. 15.) Furthermore, a search warrant's effectiveness of course does not hinge upon the presence of the suspect. Significantly "*at least as much* is required to support a search without a warrant" as is required for the issuance of a search warrant. (Emphasis added.) *Recznik v. City of Lorain,* 89 S.Ct. 342, 345; 21 L. Ed. 2d 317, 321 (1968). *See also Beck v. Ohio,* 379 U.S. 89, 96 (1964); *Aguilar v. Texas,* 378 U.S. 108, 111 (1964).

Petitioner does not squarely confront the question, what if any considerations of policy of a constitutional magnitude support a flat rule that would invalidate an otherwise lawful search, conducted incident to a concededly lawful arrest, solely because of the arresting officer's failure to obtain a search warrant. The fundamental and unavoidable issue, unless petitioner is seeking "to force resort to an arid ritual of meaningless form," *Henry v. Mississippi,* 379 U.S. 443, 449

(1965), is this. The lawful arrest of petitioner and "seizure" of his person was certainly as basic an invasion of his privacy as can be imagined. Was the slight addition to the invasion of his privacy, occasioned by the fact that the search to recover the stolen property was effected as an incident to the concededly valid arrest instead of by means of a search warrant, such as to outweigh the State's interest in protecting its citizens from crime by means which are not unreasonably burdensome, as would be a requirement that in all cases, including such as the present one, a search warrant necessarily be obtained?[27]

It is not enough nonchalantly to suggest that a search warrant must be obtained in all but emergency situations without considering the practical consequences. Any protection of the rights of the individual advanced by such a new rule must indeed be substantial to outweigh the burden which such a rule would add to the already difficult task of combatting crime. Burglary, the crime involved in the present case, continues to be the most frequently occurring major crime nationwide and is increasing at an alarming rate far in excess of the nation's increase in population.[28] Only one in five cases

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[27]"The justices who voted for the Harris and Rabinowitz decisions argued, in effect, that when privacy has already been invaded by a policeman who is on the premises legitimately, to make an arrest, the accompanying search is, at worst, only a minor additional invasion of privacy. . . ." J. Landynski, Search and Seizure in the Supreme Court 114 (1966). *See also Trupiano v. United States,* 334 U.S. 699, 714 (1948) (dissenting opinion of Chief Justice Vinson.)

[28]In 1967, the last year for which complete statistics are available, 1,605,700 reported burglaries occurred. This represented a 14.6% increase over the rate of the preceding year per 100,000 inhabitants, and a 62.1% increase over the rate of 1960 per 100,000 inhabitants. Federal Bureau of Investigation, Uniform Crime Reports 5 (1967).

of burglary is solved,[29] and *most significantly in 1967 only 8%-14% of the property stolen* (depending on the category of property and excluding locally stolen automobiles) *was recovered.* The economic loss suffered from burglaries in 1967 was in excess of $438,000,000, the average burglary loss being $273.[30]

The time and effort required of law enforcement officers, district attorneys' offices, and magistrates in obtaining and issuing a search warrant is much greater than in the case of an arrest warrant. One commentator has stated that *under ideal conditions* it takes two hours to obtain a search warrant.[31] Certainly resort to the warrant procedure should be encouraged, but are its benefits such, compared with the generally adequate judicial control of search and seizure when its product is subsequently offered into evidence, as to merit the

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[29]F.B.I. Reports, *supra* at 22. Of those arrested, seven out of ten are formally charged and of those charged only 29% are freed through acquittal or dismissal of the charges. *Supra* at 22.

[30]F.B.I. Reports, *supra* at 22, 111.

[31]Collings, *Toward Workable Rules of Search and Seizure—An Amicus Curiae Brief,* 50 Calif. L. Rev. 421, 446-47. (1962). This circumstance merits consideration in light of the vast number of searches which law enforcement officers have to carry out every day in the performance of their duties. Apparently statistics covering the number of searches conducted are not available, but the number of arrests for serious *property* crimes casts some light on the scope of the problem. In California alone there were 27,717 burglary arrests in 1967 (and 265,780 reported burglaries committed). California Department of Justice, Crime and Delinquency in California 70, 281 (1967). Nationwide there were 239,461 burglary arrests in 1967 (and 1,605,700 reported burglaries committed); there were also 447,299 arrests for larceny involving $50 or more (and 1,047,100 reported instances of such larceny committed). F.B.I. Reports, *supra* at 5, 116. Officer Del Coma himself had a monthly caseload of forty-five to eighty City of Orange burglaries in addition to his work on burglaries committed in other jurisdictions in Orange County. (R. 241-42.)

blanket requirement of a search warrant absent the presence of emergency conditions?

Some commentators have discovered a wide gulf between the ideal of the warrant procedure and the practice that actually exists. Affidavits upon which search warrants are issued often receive very little consideration by the magistrate, especially compared with the consideration given in a subsequesnt trial or other adversary proceeding at which the admissibility of the evidence obtained is contested. There is a very large disparity among magistrates as to the amount of evidence required to obtain a search warrant, and sometimes the same judge who issued the warrant will in a later proceeding declare it invalid. In some localities the role of the magistrate is perfunctory, and he places great reliance on the conclusion of the police affiant or the deputy prosecutor signing the complaint. There are also instances of warrants being issued partly in blank. L. Tiffany, D. McIntyre, Jr., and D. Rotenberg, Detection of Crime 115, 201, 204 (1967). *See also* W. LaFave, Arrest: The Decision to Take a Suspect Into Custody 15-16, 502-04 (1965).

One commentator notes:

> "Magistrates, particularly in rural areas, often have no training in the law at all, while in urban areas they frequently handle their responsibilities in an extremely lackadaisical fashion. If warrants are to be used by the police more often than in the past, magistrates will have to be available on an around-the-clock basis, and they will need some knowledge of search law. *Warrants that are issued on a pro forma basis are no more protective of the right to privacy than was the general warrant,* yet

abundant evidence exists that many overworked (and sometimes underworked) judges do not scrutinize warrant requests. They either sign without question or else delegate the warrant-issuing function to a clerk. Even on the federal level we do not know whether the warrant requirement is the protection for the citizen which the framers intended it to be. Many, if not most, warrants are issued by United States commissioners, who have standing as judicial officers. One-third of the commissioners were never trained in the law, and Chief Justice Warren has recently expressed his concern about their caliber."

(Footnotes omitted and emphasis added.) J. Landysnki, Search and Seizure and the Supreme Court 194 (1966), citing field studies of the warrant-issuing process.

These studies indicate that the search warrant and the arrest warrant are not the panaceas they are often thought to be and that when they are issued under less than ideal conditions, they afford less protection to the individual than do responsible and restrained enforcement techniques on the part of the police and prosecutors. Since the arresting officer must have just as much, if not more, information to justify a search incident to an arrest than he needs in the case of an application for a search warrant, *Aguilar v. Texas,* 378 U.S. 108, 111 (1964), the rule permitting a search without warrant as an incident to arrest does not always mean that the officer is benefited, and the suspect disadvantaged, by the avoidance of a meaningful safeguard.

That the warrant procedure is less exemplary than it is ideally imagined to be is not to say that it is of little use and should not be encouraged. And there are many incentiyes to obtain a search warrant,[32] so warrants will still be increasingly employed in the absence of a requirement that they be mandatory.[33] However,

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[32]Among these incentives are (1) the presumption of legality attending a search effected by search warrant in many jurisdictions (*see, e.g., Badillo v. Superior Court,* 46 Cal. 2d 269, 272 (1956) [294 P.2d 23, 25], which affects the admissibility of evidence and sometimes insulates the officer from civil or criminal liability for false arrest or trespass, *see Carroll v. United* States, 267 U.S. 132, 156 (1925); *Barrier v. Alexander,* 100 Cal. App. 2d 497, 499-500 (1950) [224 P.2d 436, 438]; 18 U.S.C. § 2236; Cal. Code Civ. Proc. § 262.1; (2) the opportunity for a broader search than might be justifiable as incident to an arrest; (3) the possibility of search in the absence of the suspect and of simultaneous search at different places regardless of the absence of multiple suspects; (4) the favorable impression on the court and the jury attending the use of a search warrant; (5) the possibility of determining the lawfulness of the search in advance; (6) minimizing the chance of an altercation with the suspect or others. *See* L. Tiffany, *et al.,* Detection of Crime, *supra* at 116-19; W. LaFave, Arrests, *supra* at 36-52.

[33]Law enforcement officers will not fail to employ search warrants, or fail to be encouraged to do so by prosecuting attorneys, just because it is not compulsory that warrants be obtained. In United States Department of Justice, Handbook on the Law of Search and Seizure 1-2 (1967), federal, state, and local officers are advised:

> "IMPORTANT: Generally, the courts give the police the benefit of the doubt when they first get a search warrant. So:
>
> 1. If you have time, GET A WARRANT.
> 2. If you are in doubt, GET A WARRANT.
> 3. If you are not going to search or seize immediately in the person's presence, GET A WARRANT.
>
> YOU DON'T NEED A WARRANT:
>
> 1. If your search is incidental to an arrest and you confine the search to an area under the immediate control of the arrestee; or,
> 2. If you search a motor vehicle that may be moved away and you have cause to believe (more than mere suspicion) that the person has committed or is about to commit

these considerations are certainly relevant in evaluating petitioner's claim that failure to resort to the warrant procedure in a non-emergency situation should automatically invalidate an otherwise lawful search.

In light of the foregoing, the undogmatic approach of *Rabinowitz* is even more appropriate—"reasonableness under all the circumstances and not . . . the practicability of procuring a search warrant," and deference to the findings of the trial court, which is in the best position to pass upon such matters because of its opportunity to observe the demeanor of the witnesses. *United States v. Rabinowitz,* 339 U.S. 56, 63, 66 (1950).

The *Rabinowitz* standard is *a fortiori* appropriate in evaluating, under the Fourteenth Amendment, the reasonableness of a search in a *State* prosecution. *Ker v. California,* 374 U.S. 23, 33 (1963). For despite the applicability of the exclusionary rule, *Mapp v. Ohio,*

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a crime and you search for weapons, fruits or instrumentalities of crime or contraband therein; or

3. If exceptional circumstances exist such as the belief (more than mere suspicion) or knowledge that contraband will be destroyed almost immediately *then* you need not have a search warrant *but* you will have a harder time proving the correctness of your actions to the court without it. *So get a warrant where practical."* (Emphasis by the author.)

The Handbook goes on to inform officers that they must have a particular objective in mind and cannot use a search incident to an arrest to make a general, exploratory search to discover evidence; that the intensity of the permissible search depends on the nature and size of the object sought, that maneuvering the arrest to occur on the premises in order to search will invalidate the search, and that a search warrant should be obtained even if the officer intends to make an arrest which would justify a search. *Supra* at 31-36.

In the official publication of the Peace Officers' Association of the State of California, the Chief of the Appellate Division of the Los Angeles District Attorney's office has similarly advised law enforcement officers to employ search warrants when possible. Wood, *We Should Make Greater Use of Search Warrants,* California Peace Officer (May-June, 1962) 27.

367 U.S. 643 (1961); *People v. Cahan,* 44 Cal. 2d 434 (1955) [282 P.2d 905], and this Court's holding that "the standard of reasonableness is the same under the Fourth and Fourteenth Amendments, the demands of our federal system" require a distinction between evidence held inadmissible because of this Court's "supervisory powers over federal courts and that held inadmissible because prohibited by the United States Constitution." *Ker v. California,* 374 U.S. 23, 33 (1963). *See also Chapman v. California,* 386 U.S. 18, 48 (1967) (dissenting opinion of Mr. Justice Harlan.)

In *Ker* eight members of this Court agreed that *Mapp*

> ". . . . established no assumption by this Court of supervisory authority over state courts [citation] and, consequently, it implied no total obliteration of state laws relating to arrests and searches in favor of federal law. . . . Mapp did not attempt the impossible task of laying down a 'fixed formula' for the application in specific cases of the constitutional prohibition against unreasonable searches and seizures; it recognized that we would be 'met with "recurring questions of the reasonableness of searches"' and that, 'at any rate, [r]easonableness is in the first instance for the [trial court] . . . to determine, "'. . . ,' thus indicating that the usual weight be given to findings of trial courts."
>
> *Ker v. California,* 374 U.S. 23, 31-32 (1963).
>
> ". . . . The States are not thereby precluded from developing workable rules governing arrests, searches and seizures to meet 'the practical demands of effective criminal investigation and law

> enforcement' in the States, provided that those rules do not violate the constitutional proscription of unreasonable searches and seizures . . . . Such a standard implies no derogation of uniformity in applying federal constitutional guarantees but is only a recognition that conditions and circumstances vary just as to investigative and enforcement techniques."
>
> *Ker v. California*, 374 U.S. 23, 34 (1963).

See also:

Sibron v. New York, 392 U.S. 40, 60-61 (1968);

Collings, *Toward Workable Rules of Search and Seizure—An Amicus Curiae Brief*, 50 Calif. L. Rev. 421, 427-30, 458 (1962);

Kaplan, *Search and Seizure: A No-Man's Land in the Criminal Law*, 49 Calif. L. Rev. 474, 503 (1961).

Initially it should be noted that the foregoing principles serve to demonstrate the inapplicability of many of the cases cited in Petitioner's Opening Brief, some of which expressly or impliedly based their ruling regarding the necessity for a search warrant under the circumstances upon this Court's supervisory authority over the federal courts. As California's Chief Justice Roger Traynor has observed, "Opinions written before this distinction assumed its present crucial importance may have to be reinterpreted in the light of 'the demands of our federal system.' (Ker v. California, supra, 374 U.S. at p. 33)." *People v. Thayer*, 63 Cal. 2d 635, 639 (1965) [408 P.2d 108, 110], *cert. denied*, 384 U.S. 908 (1966). Even the discarded "Trupiano rule [was] not a constitutional command, but rather

an evidentiary policy adopted by this Court in the exercise of its supervisory powers over federal courts." *United States v. Rabinowitz,* 339 U.S. 56, 67 (1950) (dissenting opinion of Mr. Justice Black). Secondly, to the extent that certain of those cited cases are based on constitutional grounds, it is apparent from *Ker* that the federal system allows some leeway for reasonable State procedures despite the applicability to the States of the Fourth Amendment's mandate of reasonableness.

As is apparent from the opinion of the California Supreme Court in the present case, *People v. Chimel,* 68 Cal.2d 436, 442-43 (1968) [439 P.2d 333, 337] (R. 424-25), California's basic rule is that of reasonableness under all the circumstances of the case rather than the practicability of obtaining a search warrant — the standard enunciated in *Ker v. California,* 374 U.S. 23, 41 (1963), and *United States v. Rabinowitz,* 339 U.S. 56, 66 (1950). *See also People v. Winston,* 46 Cal. 2d 151, 162-63 (1956) [293 P.2d 40, 46-47]. The decisions of the California courts evince a policy encouraging the increasing use of search warrants. *People v. Keener,* 55 Cal. 2d 714, 723 (1961) [361 P.2d 587, 592]. California law, however, authorizes a peace officer to arrest "without a warrant . . . [w]henever he has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed." Cal. Penal Code § 836(3). As an incident thereto the officer may conduct a reasonable search.[34] *In re Dixon,* 41 Cal. 2d 756, 761-62 (1953) [264 P.2d 513, 516].

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[34]The recent case of *People v. Hill,* 69 A.C. 568 (1968) [446 P.2d 521], cited in Petitioner's Opening Brief at page 13, footnote 3, does *not,* as petitioner characterizes it, dispense with the

California had already, prior to *Ker's* invitation to do so, developed a comprehensive and workable system of rules governing arrests and searches and seizures designed to balance the individual's constitutional right of privacy with his right to protection from crime. *See* the discussion of these rules in Collings, *Toward Workable Rules of Search and Seizure,* 50 Calif. L. Rev., *supra* at 430-58. It should be noted that in the six years since Professor Collings' analysis, California has accorded criminal suspects even more in the way of procedural safeguards, particularity with respect to the issuance of arrest warrants and the right of the police to make forcible entry.[35] "[T]he California courts . . . have been in the vanguard in the development of individual safeguards in criminal trials . . ." *Chapman v. California,* 386 U.S. 18, 50 (dissenting opinion of Mr. Justice Harlan.)

In view of the varying conditions that exist in the various States in rural, suburban, and metropolitan areas, and the variety of situations that confronts the average law enforcement officer in his everyday efforts to arrive at effective enforcement techniques, Col-

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requirement that the suspect, whose residence is searched as an incident of his arrest, be at home at the time. Rather the opinion recognizes, "When the police have probable cause to arrest one party, and when they reasonably mistake a second party for the first party, then the arrest of the second party is a valid arrest." *Supra* at 572 [446 P.2d at 523]. "[A] search based on a valid but mistaken arrest is not unreasonable as an unwarranted invasion of either the arrestee's or the defendant's privacy." *Supra* at 574 [446 P.2d at 525].

[35] *Compare* Collings, *supra* at 453-55 *with People v. Sesslin,* 68 Cal.2d 418, 422-25 (1968) [439 P.2d 321, 324-26] (R. 403-07); and *compare* Collings, *supra* at 449-50 *with People v. Gastelo,* 67 Cal. 2d 586, 588-89 (1967) [432 P.2d 706, 707-08]; *People v. Rosales,* 68 Cal.2d 299, 302-05 (1968) [437 P.2d 489, 491-93].

lings, *supra* at 427-29, "an arbitrary rule that a warrant must be procured if there is time to get one is completely unworkable. Overextensive use of search warrants would put an impossible burden on our already undermanned law enforcement personnel." Collings, *supra* at 446. A uniform rule is inappropriate to cope with conditions that are diverse and ever-changing. Some of the practical difficulties for peace officers in such a rule are discussed by Professor Collings.[36] *Supra* at 446-47. It can be added that similar burdens would be imposed upon prosecuting attorneys' offices and those members of the judiciary who are called upon to issue warrants. *Cf. See v. City of Seattle*, 387 U.S. 541, 548(n.1) (1967) (dissenting opinion of Mr. Justice Clark).

There is nothing in the most recent decisions of this Court that impugns the present search's validity under sound and settled principles which permit the States to develop workable rules regarding arrest and search within the ambit of the Fourth Amendment's mandate of reasonableness, including rules which allow peace officers under various conditions the right to conduct reasonable searches without a warrant, incident to arrest.

Despite dictum by this Court to the effect that advance judicial approval of searches and seizures through the warrant procedure must be obtained when

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[36]He also notes, "Some commentators seize upon uniformity as a kind of fetish or ideal without any awareness of its mythical quality. They fail to realize that there will be no uniformity even if the Supreme Court does take upon itself the onorous task of attempting to provide it. As long as we have fifty states and maintain a pretense of federalism there will be individual variation." Collings, *supra* at 427-28. Even the decisions of the lower *federal* courts exhibit a lack of uniformity in the area of search and seizure. *See* Collings, *supra* at 435-38.

"practicable," *Terry v. Ohio*, 392 U.S. 1, 20 (1968), the cases there cited by the Court have, if at all, voiced such a restrictive view only where there were exigent circumstances which *did* make it impossible to obtain a search warrant, *Terry v. Ohio, supra* at 20 (crime about to be committed); *Warden v. Hayden*, 387 U.S. 294, 299 (1967) (hot pursuit); where the search conducted was a search upon probable cause without any arrest or at a different time or place than the arrest, *Katz v. United States*, 389 U.S. 347, 357-58 (1967); *Preston v. United States*, 376 U.S. 364, 367-68 (1964); *Chapman v. United States*, 365 U.S. 610, 613, 615 (1961), or where the arrest itself was held invalid because of the absence of probable cause. *Beck v. Ohio*, 379 U.S. 89, 96 (1964). *See also See v. City of Seattle*, 387 U.S. 541, 542-43 (1967) (search without either a warrant or probable cause to arrest); *Camara v. Municipal Court*, 387 U.S. 523, 527-29 (1967) (same); *Schmerber v. California*, 384 U.S. 757, 769-71 (1966) (threatened destruction of evidence and considerations peculiar to intrusions beyond the body's surface). No decision of this Court, other than the short-lived case of *Trupiano v. United States*, 334 U.S. 699, 708 (1948), and its progeny, overruled by *United States v. Rabinowitz*, 339 U.S. 56, 66 (1950), has held invalid a perfectly lawful search incident to an arrest solely on the basis of the arresting officer's failure to obtain a search warrant when it would have been possible for him to do so. *See also* 339 U.S. at 85-86 (dissenting opinion of Justice Frankfurter).

In the companion opinion to *Terry*, *Sibron v. New York*, 392 U.S. 40, 60-61, 66-67 (1968), this Court expressly recognized the right to search incident to a

lawful arrest, pursuant to the State's development of ". . . its own law of search and seizure to meet the needs of local law enforcement . . .," and upheld the search of the person of the defendant Peters. By virtue of the circumstances of the case, particularly the fact that the arrest took place in the hallway of a building where Peters did not reside, the search was limited in area. The scope permitted of such a search was narrow since its purpose was to seize weapons or other things which might be used to assault an officer or effect an escape, and to prevent the destruction of evidence of the crime. *Sibron v. New York, supra* at 67. *See also Warden v. Hayden,* 387 U.S. 294, 299 (1967), and also 387 U.S. at 310-11 (concurring opinion of Mr. Justice Fortas), cited in *Terry v. Ohio,* 392 U.S. 1, 19, 26, 29 (1968).

These recent decisions reinforce the long-standing rule that, *subject to well-defined exceptions,* only where there are exigent circumstances may a search without a warrant be made upon probable cause; that among the exceptions to this rule are searches incident to lawful arrest; and that once this right to search incident to arrest is recognized in the particular case, the principal limitation on the search, under the reasonableness requirement of the Fourth Amendment, is that the scope of the search be consistent with the permissible objective of the search. *Terry v. Ohio,* 392 U.S. 1, 19, 20 (1968); *Gilbert v. California,* 388 U.S. 263, 283-84 (1967) (concurring opinion of Mr. Justice Douglas); *Warden v. Hayden, supra* at 310-12 (concurring opinion of Mr. Justice Fortas). *Cf. Mancusi v. DeForte,* 392 U.S. 364, 370-71 (1968).

Applied to the facts of the present case, these principles justify the search of the two rooms in petitioner's residence where the stolen coins were found, since recovery of the thousands of dollars of coins stolen during the burglary for which petitioner had just been arrested was a permissible objective of the search, and since the search was only as extensive and intensive as was consistent with the fulfillment of this objective.

Had a search warrant been used, there would have been no lesser invasion of petitioner's privacy, *Trupiano v. United States,* 334 U.S. 699, 714 (1948) (dissenting opinion of Chief Justice Vinson), and the same evidence would have been available to use against petitioner at trial. A warrant certainly would have covered the whole house. Even assuming that a warrant would not have authorized seizure of all the particular items recovered in the present search, the officer would have observed the objects which were not then subject to seizure during the course of his lawful execution of the search warrant. If there was probable cause to believe that these unseized objects were connected with The Money Vault burglary (or the Pulati burglary), the officer would have been able to seize these objects by using his newly acquired knowledge to obtain a second search warrant. *See United States v. Harris,* 331 U.S. 145, 172 (1947) (dissenting opinion of Mr. Justice Frankfurter). Thus as a practical matter, at least where the search is for stolen property as here, there is no question of the scope of a lawful search incident to the suspect's arrest at his residence being broader than the scope of the search that would have been permissible under a search warrant.

The problems inherent in the implementation of somewhat vague concepts of constitutional law, such as the "reasonableness" of a search under all the circumstances of the case, must surely invite deviation from the historically sound approach of developing standards through decision on a case-by-case basis. *United States v. Rabinowitz,* 339 U.S. 56, 65 (1950). However, experience has shown that the products of what must at times seem to be a tediously slow process in the evolution of meaningful guidelines have fared far better than rigid and mechanical formulae which, because they tend to create more problems than they solve, are sometimes destined for a short life. *See Trupiano v. United States,* 334 U.S. 699, 708 (1948), overruled by *United States v. Rabinowitz, supra* at 66. Determination of the limits of proper search can best be effected, "as . . . in the past, on a case-by-case basis under the general Fourth Amendment standard of reasonableness," *See v. City of Seattle,* 387 U.S. 541, 546 (1967), rather than by attempting "the impossible task of laying down a 'fixed formula' for the application in specific cases of the constitutional prohibition against unreasonable searches and seizures."[37] *Ker v. Cali-*

[37]"Defendant insists that to sanction the issuance of warrants of arrest on allegations which do not satisfy the requirements for issuance of a search warrant, is to invite misuse of such warrants of arrest to by-pass the requirements of a search warrant. The answer to this contention, at least until other remedies fail (cf. People v. Cahan (1955) 44 Cal.2d 434, 445 [282 P.2d 905, 5 A.L.R. 2d 513]), is to strike down those arrests where there has been a misuse of process, or issuance and use of process for one offense as a subterfuge to secure evidence of another. (See People v. Ghimenti (1965) 232 Cal.App.2d 76, 81 [42 Cal.Rptr. 504].) . . ." *People v. Chrisman,* 256 Cal. App. 2d 425, 447 (1967) [64 Cal. Rptr. 733, 748) (hearing denied by the California Supreme Court.)

fornia, 374 U.S. 23, 31-32 (1963). *See also Abel v. United States,* 362 U.S. 217, 240 (1960). "Thus it would seem difficult to conclude that the vice of vagueness is a sufficient reason for discarding a formulation of reasonableness under all the circumstances; a certain amount of such vagueness is rather of the essence of a constitutional principle." Leagre, *The Fourth Amendment and the Law of Arrest,* 54 J. Crim. L.C. & P. S. 393, 420 (1963).

As they become needed, guidelines as to what is a reasonable search under particular circumstances can best be formulated, in light of current federal and state court decisions, on a case-by-case basis as in the past, the validity of these standards being determined by eventual judicial review of the cases applying the standards. This pragmatic approach to the establishment of standards recognizes that the exclusionary rule is the most effective means of securing compliance with the mandate of the Fourth Amendment,[38] *Mapp v. Ohio,* 367

[38]California affords the accused an abundance of opportunities to test the reasonableness of an arrest or search under the exclusionary rule and thereby guarantees him that, through cross-examination of the arresting officer, he can probe whether probable cause really existed prior to the arrest and search. Habeas corpus is available at any time prior to or subsequent to trial (Cal. Penal Code § 1473), and the issue of search and seizure may also be litigated at the preliminary hearing (Cal. Penal Code § 738), upon motion to set aside the information or indictment (Cal. Penal Code § 995), at the newly available hearing on motion for return of property or suppression as evidence (Cal. Penal Code § 1538.5), by writ of mandamus or prohibition (Cal. Penal Code §§ 999a, 1538.5(i)), at trial, on appeal to the intermediate Court of Appeal or Superior Court (Cal. Penal Code §§ 1237, 1466), and on petition for hearing to the California Supreme Court (Cal. Rules of Court, Rule 29).

Federal and State law, including that of California, also provides for civil and criminal liability for illegal search and seizure

(This footnote is continued on the next page)

U.S. 643, 651-53, 655-56 (1961), and, unlike attempts to place unknown future cases into molds of the present, would be consistent with this Court's well-settled practice "not to formulate a rule of constitutional law broader than is required by the precise facts presented in the record." *Garner v. Louisiana,* 368 U.S. 157, 163 (1961).

II

EVEN IF IT IS ASSUMED THAT THE SEARCH WAS UNLAWFUL AND ITS FRUITS IMPROPERLY RECEIVED IN EVIDENCE, SUCH ERROR WOULD CLEARLY BE HARMLESS BEYOND A REASONABLE DOUBT

This Court has recognized that not all error of a constitutional nature requires reversal of the judgment of conviction. *Chapman v. California,* 386 U.S. 18, 24 (1967), establishes that "a federal constitutional error can be held harmless" where the Court is able "to declare a belief that it was harmless beyond a reasonable doubt."

It is respondent's position that the search of petitioner's residence was perfectly lawful in all respects, but that even if error is assumed, such error clearly was harmless under the foregoing standard.

After a jury trial petitioner was found guilty as to both the charge of the Pulati burglary (Count I) and the charge of The Money Vault burglary (Count III). (R. 1-2, 23-26.) Petitioner was sentenced to state

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under various circumstances and with varying degrees of effectiveness. *See Mapp v. Ohio,* 367 U.S. 643, 652 (n. 7) (1961); Kaplan, *Search and Seizure: A No-Man's Land in the Criminal Law,* 49 Calif. L. Rev. 474, 486-87 (1961). The continued significance of these other remedies was recently recognized by this Court in *Terry v. Ohio,* 392 U.S. 1, 15 (1968.)

prison on both counts, the sentences to run concurrently. (R. 35, 37.)

Inasmuch as some of the evidence, whose seizure and reception in evidence is presently contested, was identified as the fruits of the Pulati burglary and *none* of that evidence was identified as having any connection with The Money Vault burglary, *see People v. Chimel*, 68 Cal. 2d 436, 440 (1968) [439 P.2d 333, 335] (R. 421), consideration of the applicability of the harmless error rule demands that the effect of any assumed error be separately weighed as to each of the two findings of guilt.

A. Count I: In View of the Abundant Circumstantial Evidence of Petitioner's Guilt of the Pulati Burglary, the Reception in Evidence of Coins Recovered During the Search Did Not Bring About a Verdict Which Would Not Otherwise Have Resulted

The following evidence clearly established, beyond a reasonable doubt, that petitioner committed the burglary of the Pulatis' home and that the reception of evidence establishing that some of the Pulatis' coins were found at petitioner's residence during the September 13, 1965, search did not bring about a verdict which would not otherwise have resulted:

1. The night of the burglary marked the one night that petitioner had missed a monthly meeting of one of the three coin clubs in which he and the Pulatis were concurrent members during the preceding period of approximately one-half year. (R. 41-42, 44, 48, 60, 63.)

2. During the three months preceding the burglary, petitioner had visited the Pulatis at their home on a

regular basis. Petitioner lived in the neighborhood and would often drop by to discuss coins and buy and sell a few coins. During this period the Pulatis were engaged in re-inventorying and repackaging their collection of coins, and petitioner was often present while the Pulatis were so occupied. When on occasion petitioner expressed an interest in purchasing certain coins, the Pulatis brought them out for him to examine. (R. 42-43.)

3. Petitioner was one of only two persons in Santa Ana who knew that the Pulatis kept coins in their home. The other person who knew was the man who had sold the Pulatis their house; they were new in the area and did not yet know many people. (R. 60.) Petitioner was the only member of any of the three coin clubs, of which the Pulatis were members, who had been to their home. (R. 61.)

4. The Pulati home was not ransacked on the night of the burglary. Certain medals and silver dollars were in open sight on the coffee table and in the dining room; the sterling silver was not moved from the dining room, and Mrs. Pulati's diamond watch was still lying on the dresser in the bedroom. (R. 45-46, 70-71.) Two large drawers, several containers, and a strong box, all containing coins, were missing. These items had been located in the den, the room from which Mr. Pulati in the past had fetched coins to show to petitioner. (R. 46, 50-51, 56, 62, 69-70.)

The burglar was obviously someone who was interested exclusively in unusual coins and who knew the premises well and that coins were kept there. Petitioner was the only person who could possibly fit these specifications.

5. The first time petitioner observed Mrs. Pulati working on a book of coins at her home, he said; " 'You have all these coins around the house. You must have insurance.' " She replied that she and her husband did have insurance. (R. 43.)

6. A somewhat unusual coin wallet had been taken from the Pulati residence during the burglary. Mrs. Pulati had never seen one in anyone else's possession. The company that had made it had gone out of business. Two or three months after the burglary, Mrs. Pulati observed petitioner using such a coin wallet. She had never seen him use one prior to the burglary. (R. 284.)

7. At the trial, before which petitioner had pleaded guilty to the burglary of the Pulati home but subsequently had changed his plea to not guilty (R. 4-6), he took the stand in his own defense and gave a highly unbelievable account of how he had not burglarized the Pulatis' home but instead had purchased their coins and medals from an unknown person (although petitioner did not collect medals) without knowledge that they were in fact stolen. He also contradicted himself in his testimony regarding his acquisition of the red coin wallet. Petitioner's story was, if anything, probative evidence of petitioner's consciousness of guilt. (R. 334, 340-42, 354, 364-65, 367, 388; *see also* R. 21-22.)

In view of the trial court's proper instructions on the rule of reasonable doubt and its relation to circumstantial evidence, and on admissions (R. 16-20), it is clear beyond a reasonable doubt that the recovery of some of the stolen coins at petitioner's residence was not responsible for the guilty verdict on Count I and that any error would have been harmless beyond a reasonable doubt.

B. Count III: Since None of the Coins Recovered During the Search Were Identified as From The Money Vault Burglary, the Search Could Not Possibly Have Prejudiced Petitioner; Moreover, Petitioner's Guilt of the Burglary of The Money Vault Was Indisputably Established by Other Evidence, in Particular His Extrajudicial Statements to Civilian Witnessses Admitting the Burglary

Initially it must be noted that since none of the property seized during the search of petitioner's residence was identified as being among the items taken during the burglary of The Money Vault, *People v. Chimel,* 68 Cal. 2d 436, 440 (1968) [439 P.2d 333, 335] (R. 421), it is inconceivable that the search and the reception of its fruits in evidence could have prejudiced petitioner.

This is particularly so in view of the fact that petitioner made the following admissions, and "this Court has always viewed evidence out of a defendant's own mouth, obtained after the events, as particularly weighty with the jury. See Bram v. United States, 168 U.S. 532 (1897); Jackson v. Denno, 378 U.S. 368 (1964)." *Miller v. California,* 392 U.S. 616, 629 (1968) (dissenting opinion of Mr. Justice Marshall).

1. Prior to the burglary petitioner told Mr. Slocum, the owner of The Money Vault, that he (petitioner) was going to "knock over" a collection and make $50,000 or $100,000. (R. 97-99, 103.) Petitioner inquired as to the type of alarm system and amount of insurance carried by Mr. Slocum and asked him how he would like to have his coin shop "knocked off." (R. 103.)

2. Petitioner was one of two persons, other than Mr. and Mrs. Slocum and the sister-in-law of Mr. Slocum, who had been aware of the concealed location of the most valuable coins in The Money Vault. (R. 103-04, 182-83.) After the burglary coins from this location were missing, although other coins were left behind. (R. 89, 91, 94-95, 152.)

3. On the day preceding the burglary petitioner came into the store, was "just sitting there, looking around," did not buy anything, and remained quite a while. (R. 170-71.)

4. A few days after the burglary petitioner telephoned Mr. Slocum and told him that he (petitioner) had heard that Mr. Slocum had had The Money Vault "knocked over." After Mr. Slocum's denial, petitioner said he had heard that the job had been "real professional." (R. 105-06.)

5. On the night of the burglary petitioner told his neighbor, Thomas Ambrose, that he had a "big deal cooking" that evening, that he and another party named Chuck (whom he then attempted to contact by Walkie-Talkie) "were going to knock over" a coin shop, and that $60,000 might be involved. (R. 186-88.) On the following day petitioner admitted breaking partly[39] into the coin shop but later in the day said that this was a "phony story." (R. 188-89.) Two weeks earlier petitioner had attempted to sell Mr. Ambrose a quantity

[39]Petitioner's statements to Mr. Ambrose admitting breaking through the wall of the coin shop with intent to commit theft constituted a complete admission of the felony of burglary under California law even if petitioner *had* backed out without completely entering the premises or taking anything. *People v. Failla*, 64 Cal. 2d 560, 569 (1966) [414 P.2d 39, 45]; *People v. Jones*, 244 Cal. App. 2d 378, 380-81 (1966) [52 Cal. Rptr. 924, 925-26] (hearing denied by the California Supreme Court.)

of typewriters described by petitioner as "Hotter than a $3 bill." (R. 190-91.) During the pendency of the trial petitioner told Mr. Ambrose that Ambrose was "the only one that could shoot him down on this thing." (R. 193.)

6. During the August 25, 1965, conversation between petitioner and Officer Del Coma, petitioner discussed the possibility of the coins being returned. (R. 258.) Five days later petitioner, Chuck Hamburger, and attorney Jones discussed the same matter with the officer. (R. 260-61, 264.) Petitioner also stated that Mr. Slocum was claiming the loss of items which had not been taken. (R. 264-65, 266.) A week later petitioner told Mr. Slocum, " 'Did you ever think someone was trying to help you instead of hurt you by not cleaning you out completely?' " (R. 107.)

7. Thereafter petitioner informed Mr, Parsons of his (petitioner's) involvement in The Money Vault burglary and admitted possessing the stolen coins. Petitioner also said that some typewriters were "involved with the same thing." (R. 195-97, 230.)

8. Three months after the burglary, petitioner sold a readily identifiable coin from The Money Vault burglary to Mr. Shapiro. (R. 97, 108-11, 160-62, 306-07.)

Despite petitioner's characterization of the argument as facetious (Pet. Op. Br. p. 31), it is clear from the foregoing that even if the search of petitioner's residence is assumed to have been unlawful, the reception in evidence of the fruits of the search was harmless beyond a reasonable doubt both as to the Pulati burglary count and The Money Vault burglary count. *Chapman v. California*, 386 U.S. 18, 24 (1967).

Conclusion

The search of petitioner's residence for the fruits of The Money Vault burglary for which petitioner had just been arrested was reasonable as incident to a concededly lawful arrest; the scope of the search properly extended to the two rooms where the stolen coins were found since these rooms were likely locations of the coins stolen during The Money Vault burglary, and the record unequivocally indicates that the arrest was not delayed or maneuvered to bring petitioner's residence within the scope of a permissible search.

The extent and intensity of the search were no greater than was justified by the officer's legitimate objective, to return the coins and coin paraphernalia stolen from The Money Vault to their rightful owner, and only what appeared to be property stolen from The Money Vault was seized. Moreover, a complete inventory of the items recovered was compiled in the presence of petitioner and a copy furnished to him.

Petitioner received the substance of the protection which a search warrant is designed to provide, although no such warrant was obtained. The information known to the arresting officer was sufficient to enable him to obtain a search warrant, although his failure to do so did not render the search unlawful. Moreover, the peculiar circumstances of the present case would have rendered it highly burdensome in terms of time and effort for the officer to execute a search warrant affidavit.

Petitioner would be in no better position today had the officer gone through the unreasonable effort required to obtain a search warrant in the present case.

The officer did nothing he could not properly have done under a search warrant, nor was justification of the search facilitated in any way by the fact that judicial review occurred subsequent to the search rather than as an antecedent thereto. To reverse the present judgment of conviction because the search and seizure, in all respects impeccable, was conducted without a search warrant would be to elevate form above substance and pointlessly, without advancing the cause of justice, punish a police department and a district attorney's office which like others throughout the nation[40] have relied justifiably for years on the opinions of this Court authorizing searches of the type that took place here.

The reasonableness of the present search is compellingly demonstrated by assessing it in light of the standard enunciated in one of this Court's most recent major opinions in the area of search and seizure, a standard which has been an underlying concept of the law of search and seizure since the late seventeenth century:[41]

> ". . . it is necessary 'first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected

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[40]". . . Search and seizure incident to lawful arrest is a practice of ancient origin and has long been an integral part of the law-enforcement procedures of the United States and of the individual states." (Footnotes omitted.) *Harris v. United States,* 331 U.S. 145, 150-51 (1947). *See* cases collected in 82 A.L.R. 786 *et seq.,* 74 A.L.R. 1394 *et seq.,* 51 A.L.R. 434 *et seq.,* 32 A.L.R. 697 *et seq.,* and in the A.L.R. Blue Book of Supplemental Decisions to these annotations. *See also Abel v. United States,* 362 U.S. 217, 235-36 (1960).

[41]N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution 34 (1937).

interests of the private citizen,' for there is 'no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails.' Camara v. Municipal Court, 387 U.S. 523, 534-535, 536-537 (1967). . . ." *Terry v. Ohio,* 392 U.S. 1, 21 (1968).

See also Elkins v. United States, 364 U.S. 206, 222 (1960);

Carroll v. United States, 267 U.S. 132, 149 (1925).

It should not be presumed that law enforcement officers will conduct unlawful searches in the absence of a rule making search warrants mandatory in all cases.[42] "[W]e should not permit our knowledge that abuses sometimes occur to give sinister coloration to procedures which are basically reasonable." *Harris v. United States,* 331 U.S. 145, 155 (1947). In any event experience has shown that the most effective deterrent against unreasonable search and seizure is the exclusionary rule. Moreover, there are factors that increasingly induce officers to obtain warrants when it is not unreasonably burdensome for them to do so. The rights

[42] *Cf. Beauharnais v. Illinois,* 343 U.S. 250, 263 (1952), wherein it was held: ". . . Every power may be abused, but the possibility of abuse is a poor reason for denying Illinois the power to adopt measures against criminal libels sanctioned by centuries of Anglo-American law." Clearly, ". . . no method for conviction of the wrongdoer has been devised that does not hold some danger to the bystander. . . ." Jackson *et al., Criminal Justice: The Vital Problem of the Future,* 39 A.B.A.J. 743 (1953). Any system that could be devised to preclude *all possibility* of abuse probably would completely eliminate most effective law enforcement techniques.

guaranteed by the Fourth Amendment are adequately protected so long as

> ". . . it is assured that *at some point* the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. . . ." (Emphasis added).
>
> *Terry v. Ohio,* 392 U.S. 1, 21 (1968).

The question before this Court is really whether the burden on the average citizen, in terms of the likelihood of infringement upon his Fourth Amendment rights by the conduct of searches incident to lawful arrest instead of by search warrant, outweighs the benefit to him of the practice of search incident to arrest in terms of what he reasonably expects in the way of effective protection from lawlessness. The question thus is one of reasonable accommodation of the interests of society and the individual. Respondent submits that the State's interest in protecting its citizens from crime by means which are not unreasonably burdensome, as would be the obtaining of a search warrant in all cases where possible and under the circumstances of the present case, outweighed whatever slight addition there might have been to the legitimate invasion of petitioner's privacy from the fact that the lawful search was conducted incident to a concededly valid arrest instead of pursuant to a search warrant. *Trupiano v. United States,* 334 U.S. 699, 714, 716 (1948) (dissenting opinion of Chief Justice Vinson.)

The following observations seem appropriate to the present case, particularly in light of the fact that the matter here on review before the Court is a *State* conviction involving California's development of workable rules of arrest and search and seizure under our federal system of government:

> ". . . [T]his seems . . . a rather inopportune time to create a single rule more than the Constitution plainly requires to block conviction of guilty persons by keeping out probably the most reliable kind of evidence that can be offered."
>
> *Mancusi v. DeForte,* 392 U.S. 364, 373 (1968) (dissenting opinion of Mr. Justice Black, concurred in by Mr. Justice Stewart).

> ". . . To insist upon the use of a search warrant in situations *where the issuance of such a warrant can contribute nothing to the preservation of the rights which the Fourth Amendment was intended to protect,* serves only to open an avenue of escape for those guilty of crime and to menace the effective operation of government which is an essential precondition to the existence of all civil liberties." (Emphasis added.)
>
> *Trupiano v. United States,* 334 U.S. 699, 714-15 (1948) (dissenting opinion of Chief Justice Vinson, concurred in by Mr. Justice Black and Justices Reed and Burton).

For the foregoing reasons respondent State of California urges that the judgment of the California Supreme Court upholding petitioner's conviction of two counts of burglary be affirmed as to both counts.

Respectfully submitted,

THOMAS C. LYNCH,
Attorney General of the State of California,

WILLIAM E. JAMES,
Assistant Attorney General of the State of California,

RONALD M. GEORGE,
Deputy Attorney General of the State of California,

Attorneys for Respondent.

APPENDIX A*

The Warrants and Complaints for the Two Arrests

*The two warrants of arrest and the complaints, which were the sole basis upon which the respective warrants were issued, were received as defense exhibits at the trial but were omitted from the record on appeal as originally constituted. (R. 386-87.) Pursuant to counsel's stipulation (which has not been made a part of the record before this Court) certified copies of the complaints and warrants were ordered included in the record on appeal in the State proceedings. The complaints, with the formal parts omitted, are also set forth in the opinion of the Court of Appeal unofficially reported at 254 A.C.A. 13, 15-16 (nn.1, 2) (1967) [61 Cal. Rptr. 714, 715-16] (R. 390-92.)

IN THE MUNICIPAL COURT OF SANTA ANA-ORANGE JUDICIAL DISTRICT, COUNTY OF ORANGE, STATE OF CALIFORNIA

Complaint—Criminal

P.C. Sections 806-1426.

The People of the State of California, Plaintiff, vs. Ted Steven Chimel, Defendant. No. 91401.

Filed Municipal Court Santa Ana Orange Judicial District Sep 13 1965 R. D. Park Clerk.

Personally appeared before me this 13th day of September, 1965 T. DEL COMA who, being first duly sworn deposes and says:

That on or about the 14th day of August, 1965, at and within ~~Judicial District,~~ Orange County, California, the crime of Felony, to-wit: Violation of Section 459 of the Penal Code was committed by Ted Steven Chimel who at the time and place last aforesaid, did then and there willfully, and unlawfully, feloniously and burglariously enter a building known as The Money Vault, located at 153 North Glassell Street, Orange, in said County and State, with intent to commit theft.

I HEREBY CERTIFY that the foregoing instrument is a correct copy of the original on file in this office.

ATTEST my hand this Oct 27, 1966 19.....

R. D. PARK

Clerk of the Municipal Court, Santa Ana-Orange Judicial District County of Orange, State of California.

By Glenda Barnwell/s, Deputy

All of which is contrary to the form, force and effect of the Statute in such cases made and provided and against the peace and dignity of the people of the State of California.

Wherefore, said complainant prays that a warrant may be issued for the arrest of the said Ted Steven Chimel and that he be dealt with according to law.

Subscribed and sworn to before me, this 13th day of September, 1965.

REL:ecr

Kenneth Williams, District Attorney of Orange County, State of California.

By: Deputy.

T. Del Coma/s

Judge

R. D. PARK
Municipal
Clerk of the Santa Ana-Orange Court
Judicial District, County of Orange, State of California

By Emily Rawson/s Deputy

Orange Police Dept.

IN THE MUNICIPAL COURT OF SANTA ANA—ORANGE JUDICIAL DISTRICT, COUNTY OF ORANGE, STATE OF CALIFORNIA

610 North Broadway Street, Santa Ana.

The People of the State of California, Plaintiff, vs. Ted Steven Chimel Defendant(s). Case No. 91401.

Filed Municipal Court, Santa Ana-Orange Judicial District, Sept. 15, 1965 R. D. PARK, Clerk By ..... Deputy.

WARRANT OF ARREST-FELONY

The People of the State of California, to any peace officer of this State:

Complaint on oath having this day been laid before me that the crime of felony, to-wit:

[Defendant informed of right to Court appearance per P.C. 821-822 Date 9-13-65, Time 5:55 P.M. By: T. Del Coma/s, arresting officer]

Violation of Section 459 P.C. has been committed and accusing defendant TED STEVEN CHIMEL thereof, you are therefore commanded forthwith to arrest the above-named defendant and bring said defendant before me at the above-entitled court or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

The defendant is to be admitted to bail in the sum of	$10,000.00
Issued at the above-named judicial district Penalty Assessment	$ 1,000.00
Total for Release	[$11,000.00]

Dated Sept. 13, 1965 at 10:39 AM.

DAVID D. FRENCH/s
Judge of the above-entitled Court.

(SEAL) P.C. 813, 817, 821, 824.

RETURN OF PEACE OFFICER

I hereby certify that I received the above warrant and that I served the same by arresting the above-named defendant on September 13, 1965 and

(Applicable item checked)

☐ Bringing said defendant before a magistrate of the ..... Court of ..... Judicial District, on ..... in the County of .....

☒ booking said defendant at the Orange County Jail, on 9-13-65 in the County of Orange.

H. Richardson
Name and Title of Peace Officer
By T. Del Coma/s—Det. #3
Officer or Deputy

Dated.....

PC. 821, 822, 848.

APPEARANCE DATE ON ADMISSION TO BAIL

Bail and penalty assessment posted and defendant notified to appear in the above-entitled Court on ..... at ....M.

Dated .....

Officer in Charge of Jail
P.C. 1269, 1295

CERTIFICATE OF A MAGISTRATE OF ANOTHER COURT

I hereby certify that the defendant named in the above warrant was this day brought before me and I ordered that the said defendant be admitted to bail in the sum of $..... including penalty assessment.

(Applicable item checked)

Bail Given ☐ Bail and penalty assessment having been given by ..... whose address is..... the said defendant was ordered to appear in the above-entitled court on ..... at .....M., and said defendant is hereby ordered released.

Bail not Given ☐ Bail not having been given, the said defendant is hereby remanded to the custody of the ....., ... for appearance in the above-entitled court on ..... at .....M.

Dated ....., at ....., California.

Signature of Magistrate
Title and Court
P.C. 821, 1269, 1269a, 1269b

F 2015-2204

WARRANT OF ARREST-FELONY

IN THE MUNICIPAL COURT OF SANTA ANA-ORANGE JUDICIAL DISTRICT, COUNTY OF ORANGE, STATE OF CALIFORNIA

Complaint—Criminal

P.C. Sections 806-1426.

The People of the State of California, Plaintiff, vs. Ted Steven Chimel, Defendant. No. 91516.

Filed Municipal Court, Santa Ana Orange Judicial District, Sep 16 1965 R. D. Park Clerk.

Personally appeared before me this 16th day of September, 1965 F. D. GALLMEISTER who, being first duly sworn, deposes and says:

COUNT I: That on or about the 2nd day of February, 1965, at and within ~~Judicial District,~~ Orange County, California, the crime of Felony, to-wit: Violation of Section 459 of the Penal Code was committed by Ted Steven Chimel who at the time and place last aforesaid, did then and there wilfully, ~~and~~ unlawfully, feloniously and burglariously enter a house in the possession of and under the control of Vito L. Pulati, located at 1303 South Flower Street, Santa Ana, in said County and State, with intent to commit theft.

COUNT II: That on or about the 2nd day of February, 1965, at and within Orange County, California, the crime of Felony, to-wit: Violation of Section 496 of the Penal Code was committed by TED STEVEN CHIMEL who at the time and place last aforesaid, did then and there willfully, unlawfully and feloniously buy and receive certain property, to-wit: coins, which had been stolen, knowing the same to have been stolen

and did conceal and withhold such property from the owner.

I HEREBY CERTIFY that the foregoing instrument is a correct copy of the original on file in this office.

ATTEST my hand this Oct. 27, 1966 19.....

R. D. PARK
Clerk of the Municipal Court, Santa Ana-Orange Judicial District
County of Orange, State of California
By Glenda Barnwell/s, Deputy

All of which is contrary to the form, force and effect of the Statute in such cases made and provided and against the peace and dignity of the people of the State of California.

Wherefore, said complainant prays that a warrant may be issued for the arrest of the said Ted Steven Chimel and that he be dealt with according to law.

Subscribed and sworn to before me, this 16th day of September, 1965.

JPD/REL/ar

Kenneth Williams, District Attorney of Orange County, State of California.

By: Deputy.
F. D. Gallmeister/s

.....

Judge
R. D. PARK
Municipal Clerk of the Santa Ana-Orange Court Judicial District, County of Orange, State of California
By Emily Rawson/s Deputy

IN THE MUNICIPAL COURT OF SANTA ANA-ORANGE JUDICIAL DISTRICT, COUNTY OF ORANGE, STATE OF CALIFORNIA

610 North Broadway Street, Santa Ana.

The People of the State of California, Plaintiff, vs. Ted Steven Chimel, Defendant(s). Case No. 91516.

Filed Municipal Court Santa Ana-Orange Judicial District, Sept. 17, 1965. R. D. PARK, Clerk By .....
.....Deputy.

WARRANT OF ARREST-FELONY

The People of the State of California, to any peace officer of this State: Complaint on oath having this day been laid before me that the crime of felony, to-wit: Violation of Section 459 P.C. - Ct. I, Violation of Section 496 P.C. - Ct. II, has been committed, and accusing defendant TED STEVEN CHIMEL thereof, you are therefore commanded forthwith to arrest the above-named defendant and bring said defendant before me at the above-entitled court or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

The defendant is to be admitted to bail in the sum of $10,000.00

Issued at the above-named judicial district

Penalty Assessment $ 1,000.00

Total for Release [$11,000.00]

Dated Sept. 16, 1965 at 10:30 A.M.

DAVID D. FRENCH/s
Judge of the above-entitled Court
P.C. 813, 817, 821, 824

(SEAL)

RETURN OF PEACE OFFICER

I hereby certify that I received the above warrant and that I served the same by arresting the above-named defendant on Sept. 16, 1965 and

(Applicable item checked)

☐ bringing said defendant before a magistrate of the ..... Court of ..... Judicial District, on ..... in the County of .....

☒ booking said defendant at the Orange County Jail, on Sept. 16, 1965 in the County of Orange.

Dated Sept. 16, 1965.

R. L. Merino/s
Name and Title of Peace Officer
By Chief Edward J. Allen, Santa Ana
Officer or Deputy

P.C. 821, 822, 848

APPEARANCE DATE ON ADMISSION TO BAIL

Bail and penalty assessment posted and defendant notified to appear in the above-entitled Court on ..... at ..... M.

Dated .....

.....
Officer in Charge of Jail

P. C. 1269, 1295

CERTIFICATE OF A MAGISTRATE OF ANOTHER COURT

I hereby certify that the defendant named in the above warrant was this day brought before me and I ordered that the said defendant be admitted to bail in the sum of $..... including penalty assessment.

(Applicable item checked)

Bail Given ☐ Bail and penalty assessment having been given by ....., whose address is ...., the said defendant was ordered to appear in the above-entitled court on .... at .....M., and said defendant is hereby ordered released.

Bail not Given ☐ Bail not having been given, the said defendant is hereby remanded to the custody of the ..... for appearance in the above-entitled court on ..... at ....M.

Dated ..... at ....., California.

F 2015-2204

.....
Signature of Magistrate

.....
Title and Court

P.C. 821, 824, 1269, 1269a, 1269b

WARRANT OF ARREST-FELONY

APPENDIX B*

Inventory of Property Seized and of Other Trial Exhibits

*In lieu of having transmitted to this Court the bulky exhibits comprising the coins which were received in evidence at the trial, as petitioner had them transmitted to the California Court of Appeal when the case was before that court, respondent with the express concurrence of petitioner's conusel has appended hereto an inventory of these coins and of other exhibits which were received in evidence at the trial.

This inventory is part of the Superior Court file in the present case. It lists all the items retrieved from petitioner's residence during the September 13, 1965, search (People's Exhibits 11, 12, and 13; R. 226, 228, 274, 284-85), including those items identified as from the Pulati burglary. (People's Exhibit 11-A [part of Exhibit 11]; R. 226-27, 285.) The inventory also lists all the other exhibits received in evidence at the trial except for the photographs and drawings (*i.e.* People's Exhibit 7 [the 1877-S Trade Dollar from The Money Vault burglary sold by petitioner to Mr. Shapiro], R. 110; Defendant's Exhibits A and B [an 1879 Trade Dollar and an empty coin folder, respectively], R. 308-09, 388-89.)

Page 1 of 7 pages

IN THE MATTER OF PEOPLE VS CHIMEL
CASE NO. C-16098

(Inventory of Peoples Exhibit No. 11)

1 Lincoln Head Cent Coin Folder containing: 51 Lincoln Head pennies

1 Washington Quarter Folder containing: 61 Washington quarters

1 Coin Wallet containing: 14 Lincoln Head pennies, 1 Peace Type Silver Dollar, 3 large cents

1 Complete Set Jefferson Nickles BR Uncirculated, 1938-1964; 71 coins

1 Envelope #1 containing:
1 Indian Head penny
7 Lincoln Head pennies
3 Indian Head or Buffalo type 5¢ pieces
8 Winged Head Liberty or "Mercury" type dimes
10 Roosevelt type dimes
10 20¢ pieces
4 Franklin-Liberty Bell type half dollars

1 Tube No. 1 containing: 50 Lincoln Head pennies

1 Tube No. 2 containing: 25 Lincoln Head pennies

1 Tube No. 3 containing: 50 Lincoln Head pennies

1 Tube No. 4 containing: 1 Indian Head penny and 1 Flying Eagle penny

1 Tube No. 5 containing: 47 Liberty Head type 5¢ pieces

1 Tube No. 6 containing: 41 Liberty Head type 5¢ pieces and 6 Shield type 5¢ pieces

1 Tube No. 7 containing: 27 Jefferson type 5¢ pieces

1 Tube No. 8 containing: 22 Jefferson type 5¢ pieces

1 Tube No. 9 containing: 21 Jefferson type 5¢ pieces

1 Tube No. 10 containing: 13 Jefferson type 5¢ pieces
1 Tube No. 11 containing: 19 Jefferson type 5¢ pieces
1 Tube No. 12 containing: 35 Indian Head or buffalo type 5¢ pieces
1 Tube No. 13 containing: 42 Indian Head or buffalo type 5¢ pieces.

-1-

Page 2 of 7 pages

IN THE MATTER OF PEOPLE VS CHIMEL

Continued—Inventory of Peoples Exhibit No. 11

1 Tube No. 14 containing: 34 Indian Head or buffalo type 5¢ pieces
1 Tube No. 15 containing: 42 Indian Head or buffalo type 5¢ pieces
1 Tube No. 16 containing: 34 Indian Head or buffalo type 5¢ pieces
1 Tube No. 17 containing: 42 Indian Head or buffalo type 5¢ pieces
1 Tube No. 18 containing: 37 Indian Head or buffalo type 5¢ pieces
1 Tube No. 19 containing: 5 Jefferson type and 3 Liberty Head type 5¢ pieces
1 Tube No. 20 containing: 43 Indian Head or buffalo type 5¢ pieces
1 Tube No. 21 containing: 43 Indian Head or buffalo type 5¢ pieces
1 Tube No. 22 containing: 42 Indian Head or buffalo type 5¢ pieces
1 Tube No. 23 containing: 32 Indian Head and 2 Liberty Head type 5¢ pieces

1 Tube No. 24 containing: 20 Indian Head 5¢ pieces
1 Tube No. 25 containing: 20 Indian Head 5¢ pieces
1 Tube No. 26 containing: 43 Roosevelt type dimes
1 Tube No. 27 containing: 7 Roosevelt type dimes
1 Box No. 1 containing: 17 Foreign Coins
2 Lincoln Head pennies

Miscellaneous—Package of empty coin folders
2 Empty coin tubes
6 packages razor blades

IN THE MATTER OF PEOPLE VS CHIMEL

Case No. C-16098

(Inventory of Peoples Exhibit No. 11-A)

1 Coin Tube containing: 25 Lincoln Head pennies
1 German 5 Marks coin
1 French 5 Francs coin
1 Panamanian Commemorative coin
1 Republic of Guatemala peso coin
2 Sherbrooke coin exchange of Canada tokens
1 Souvenir Gold coin from Redding, Calif.
2 Golden Gate International Exposition coins
1 Alaskan brotherhood coin
1 Washington state diamond jubilee coin
1 One dollar Alaska trade coin
1 Century 21 Exposition coin
6 Century 21 Exposition trade dollars
1 Colorado and Wyoming numismatic Assn. coin
1 United Nations Organization coin
3 Hawaii trade dollars

1 Old Ironsides coin
1 Pony Express Centenniel coin
1 Queen Elizabeth II Coronation coin
1 Victory Liberty Loan coin
1 Florida State Capital coin
1 Canadian Friendship token
1 Dakota territory centenniel 50¢ trade coin
1 Allied victory over the axis coin

IN THE MATTER OF PEOPLE VS CHIMEL

Continued—Inventory of Peoples Exhibit No. 11-A

1 Gold Nugget celebration 50¢ trade coin
1 300th Anniversary Landing of the Swedes in America coin
1 Gustavus Linden Mueller coin
1 Broas Bros. pie bakers coin
1 Elect Vance police Judge coin
6 Zero cents coins
1 Northern Calif. numismatic pin
1 Portion of envelope bearing name and address of Ted Chimel

IN THE MATTER OF PEOPLE VS CHIMEL

CASE NO. C-16098

(Inventory of Defendants Exhibit A)

1 Silver Dollar (1879)

(Inventory of Defendants Exhibit B)

1 Empty Coin folder

(Inventory of Peoples Exhibit 12)

Box No. 1

88 Lincoln Head pennies

Box No. 2

14 Indian Head cents
3 Flying Eagle cents
26 Lincoln Head cents
1 2¢ piece
10 Jefferson type nickels
4 Barber or Liberty Head type dimes
10 Winged Head Liberty or Mercury type dimes
13 Roosevelt type dimes

Box No. 3

7 Coin Tubes containing: 180 Winged Head Liberty or Mercury type dimes
1 Coin Tube containing: 31 Roosevelt type dimes
Empty coin folders

Box No. 4

1 Stone Mountain Memoriam Comm. coin
1 Booker T. Washington Comm. coin
1 Washington-Carver Comm. coin
3 Franklin-Liberty Bell type half dollars
5 Liberty Head or Morgan type silver dollars
17 Peace type silver dollars

IN THE MATTER OF PEOPLE VS. CHIMEL

CASE NO. C-16098

Continued - Inventory of Peoples Exhibit 12

Box No. 5

2 Indian Head pennies
32 Lincoln Head pennies
1 2¢ piece
2 Liberty Head nickels
2 Jefferson type nickels
1 Kennedy half dollar
1 Canadian 5¢ piece
1 Newfoundland 1¢ piece
1 California State Numismatic Assoc. coin

Box No. 6

28 Indian Head or Buffalo type nickels
4 Jefferson type nickels
44 Winged Head Liberty or Mercury type dimes
4 Roosevelt type dimes
1 Coin Folder containing: 83 Washington quarters

Inventory of Peoples Exhibit 12-A

3 Liberty Head nickels
1 Roosevelt type dime
1 Washington quarter
1 California State Numismatic Assoc. coin

Inventory of Peoples Exhibit 12-B

1 Coin Folder containing:
1 Indian Head or Buffalo type nickel
1 Jefferson type nickel

IN THE MATTER OF PEOPLE VS CHIMEL

CASE NO. C-16098

Continued—Inventory of Peoples Exhibit 12-B

4 Winged Head Liberty or Mercury type dimes
1 20¢ piece
2 Franklin half dollars
3 Peace type silver dollars

Inventory of Peoples Exhibit No. 13

1 Coin box containing: 1 Empty coin folder

Exhibit No. 7

1 Christian Gobrecht silver dollar

THIS INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE

ATTEST: Dec 30 1968

W. E. ST JOHN
County Clerk and Clerk of the
Superior Court of the State of California in and for
the County of Orange.

By [illegible signature] DEPUTY

(SEAL)

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 770

TED STEVEN CHIMEL,

Petitioner,

vs.

CALIFORNIA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

PETITIONER'S REPLY BRIEF

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Questions Presented

The statement of the issues in this case, as phrased by the Respondent, raises certain problems which it is suggested may distract attention from the crucial issues presented by this case. Respondent sees three issues, each of which is poured from the same mold. Thus, it is asked:

> Was the search of petitioner's home *rendered unreasonable* by the presence or the absence of certain conditions?

To phrase the issues in this manner invites attention away from the fundamental issue. In other words, this manner of phrasing quietly suggests that an officer has some basic right to search—but, if certain conditions are found present, then a search carried out under this right may be "rendered unreasonable." Inquiry in this case, if it is to be fruitful, must start from the logical point of beginning:

> Does an officer have a right to make any invasion of individual liberty based on the facts of this case and if he does, what is the extent of that right and upon what legal authority does it rest?

Statement of the Case

Although the evidence has been extensively reviewed by the Respondent, several items have been overlooked which may lend clarity to consideration of the case. Only those items are noted here. Bracketed references are to pages of the Respondent's brief, A. refers to pages of the Single Appendix.

[10] Petitioner was arrested by Officer Del Coma on August 25 without a warrant. (A. 423-24, fn. 4)

[10-11] Attorney Jones stated to Officer Del Coma that he represented Hamburger. Attorney Jones did not ever state to Del Coma that he represented Chimel. Attorney Jones testified that he represented Hamburger. Attorney Jones testified that he never represented Chimel. (A. 269, 343)

[14-15] On the day following the burglary of the Money Vault, Slocum transmitted a list of the missing coins over the coin circuit teletype. (A. 176)

[20] Regarding identification of the missing coins, Slocum testified as follows:

> Well, as far as the items, this rare stuff that was taken wasn't the common every day—every-day stuff that you sell over the counter. In other words, it is stuff that you stock for people who want to invest a little more money, and what we did, just like a coin dealer, like a used car dealer knows his coins. *We know the coins we had.* (emphasis added.)
>
> Lot of people say, 'You can't keep track of the 20,000 coins in your head,' and this is true, but you have 15 coins that are of the value that you want to remember. The others are so close to face value, like in bags of pennies, which is 5,000 to a bag, worth 50, $55 each bag, but don't care about those dates, *but the particular items we had was missing, whichever you want to call it, at the time, was the ones that we knew.* (emphasis added.) (A. 176)

[29] The testimony of Morris Diehl on cross-examination, reads as follows in context:

> Q. I am interested in when Mr. Chimel talked to you about this very case. A. All he told me was that I would have to go to court to—he was—his attorney would give me a Subpena to go to court for him.
>
> Q. And he didn't tell you what it was going to be about? A. He said it was something about a burglary.
>
> Q. Just something about a burglary? A. Yes.
>
> Q. And you were going to come to court and testify to something about a burglary? A. Well, just to testify that he had bought these medals and tokens.
>
> Q. Oh, he told you to testify that he had bought the medals and tokens? A. Well, he did.

Q. Did you see the money change hands? A. I saw these medals and tokens—the fellow come around and asked me, and I said I couldn't use them, and then the next thing I know he had them, he had bought them.

Q. The next thing you knew he had them. A. Yes, he bought those.

Q. How do you know he bought them? A. Because first he was going to pay me, and he didn't. Then when he bought these he didn't have any money. (A. 303-04)

The testimony that Petitioner "told Diehl to testify that Petitioner had purchased the medals and tokens" appears to have been given by counsel for the prosecution.

ARGUMENT

SECTION I

Neither the Common Law nor the Prior Decisions of This Court Provide Legal Authority for the Search Made in This Case.

In the interest of brevity, response will be made, with one or two exceptions, only to the Respondent's major topic headings. The first of these, the proposition that *Giordenello* v. *United States,* 357 U. S. 480 (1958) permits an arrest on probable cause even though a defective arrest warrant is used (R. Br. 42-44), neither raises nor deals with any issue. Certainly there may be times when an officer might be required to have a valid warrant in order

to make a legal arrest.[1] But the facts of this case do not raise any issue in that regard and the point is conceded *arguendo*. (cf. P. Br. p. 26) It is observed though that the *Giordenello* holding involved only an arrest and a search of the person. Thus, *Giordenello* is not of aid in resolving the question at bar.

Respondent's second point urges that the "right" to conduct a search of the place of arrest incident to the arrest finds its basis in the common law and earlier decisions of this Court. (R. Br. 45-50) A strong case is made for the right of an officer making an arrest to search the person of the accused. That proposition, however, has already been conceded. So that argument does not help in this case. Notable, though, are the authorities cited by the Respondent in support of this "common law right" to search the place of arrest. Indeed, the cases cited are the very cases analyzed in Petitioner's opening brief, *Weeks* v. *United States,* 232 U. S. 383 (1913); *Carroll* v. *United States,* 267 U. S. 132 (1925); *Agnello* v. *United States,* 269 U. S. 20 (1925) and *Marron* v. *United States,* 275 U. S. 192 (1927). If Petitioner's analysis of these cases is correct, they do not support the existence of a "right, incident to arrest, to search the place of arrest."

Presumably, as support for the existence of this proposition at common law, the Respondent also cites Hale, *Pleas of the Crown,* 112-14 (1st Am. ed. 1847). The quotation from Hale says nothing about search of the place of arrest and therefore lends no substance to the claim. The

---

[1] Probably the most frequently encountered example of such necessity would involve arrest for a misdemeanor which was not committed in the officer's presence. See California Penal Code sections 836, 837.

lack of reference to a supporting English case rather strongly suggests that there was no such right to search the place of arrest at common law. If there is such a case or such cases they would almost certainly conflict with *Entick* v. *Carrington,* 19 How. St. Tr. 1029 (1765), which has been cited time and again, with approval, in the opinions of this Court. See e.g. *Boyd* v. *United States,* 116 U. S. 616 (1886).

Respondent's second point therefore reduces, on analysis, to whole-hearted reliance on *United States* v. *Rabinowitz,* 339 U. S. 56 (1950). And the argument, essentially, is to the effect that *Rabinowitz,* because it exists, is right. Certainly there is some strength to that argument which may not be lightly discounted.

But it seems impossible to square the "no warrant is required" language of *Rabinowitz* with the liberty-preserving words of Lord Camden in *Entick.* And if Lord Camden's opinion in that famous case is representative of the common law basis of the Fourth Amendment, then the words of Chief Justice Marshall in America's most fundamental and most well known constitutional case may be apropos:

> That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected . . . The principles, therefore, so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent.

Marbury v. *Madison,* 5 U. S. [1 Cr.] 137, 176 (1803). If *Entick* is right, the statement in *Rabinowitz* that "no warrant is required" is wrong.

The Respondent's third point suggests that under present law the search in this case was reasonable and proper. (R. Br. 45-99) In making this argument, the Respondent finds itself impaled on a two-pronged logical dilemma which is dealt with most artfully but which, by its nature, must come to grief on close scrutiny. Respondent observes that Officer Del Coma had a good deal of contact with Deputy District Attorney Law regarding this case before any warrant was issued or any search made. (R. Br. 72) It is conceded that "exigent circumstances" were not shown to be present. (R. Br. 71) Urging then that the officer had sufficient information known to him to have obtained a search warrant at the time, Respondent states:

> . . . it is apparent that everything pointed to the likelihood of the stolen coins being at petitioner's residence and nothing suggested their being any place else.[2] (R. Br. 75)

If this was the officer's state of mind, it seems inescapable that when he went to Petitioner's residence, he went there for the express purpose of searching that place. The lack of any evidence to show a search of Petitioner's person prior to searching the residence strongly supports this view. Thus, if Respondent is correct as to the likelihood

---

[2] In fact, the evidence showed just the opposite. Mr. Law, it is recalled, was "not satisfied" with the state of the evidence to justify Petitioner's arrest on August 30. (A. 380) Thereafter, "once there was definite information concerning petitioner's statement to Parsons", Mr. Law authorized the arrest. But the information as to Parsons also supplied good reason to think that petitioner was *not* in possession of stolen coins. Petitioner stated to Parsons, in the same conversation, that he had "given the coins to somebody else." (A. 196) In addition, a substantial number of stolen coins had been, by that time, seized from Jones and identified by Slocum. (A. 268-69)

of stolen coins being in Petitioner's residence, then the series of meetings between Officer Del Coma and Deputy District Attorney Law must have involved some consideration of obtaining a search warrant and Mr. Law must have rejected the suggestion. The reason for this veto, if there was such, is amply apparent. The officer testified that he had no reason to believe that any particular property was present in Petitioner's home. (A. 230, 235) As the preceding footnote indicates, the officer actually had good reason to believe that Petitioner did not have the coins. On this state of affairs then, no one could have executed an affidavit alleging belief that described property was likely to be found in Petitioner's residence. No search warrant could have issued. California Penal Code sections 1525, 1527.

It is then argued that the extreme difficulty of identifying and describing the Slocum coins supplied a reason for dispensing with a search warrant in this case. (R. Br. 76) "These [some delay and inconvenience] are never very convincing reasons and, in these circumstances, certainly are not enough to by-pass the constitutional requirement." *Johnson* v. *United States,* 333 U. S. 10, 15 (1948) But more significantly this claim does not comport with Slocum's testimony. Slocum published a list of the stolen coins on the coin circuit teletype the day after the burglary. (A. 176) Slocum testified that he could identify his coins. (*ibid.*) The search took place one month after the burglary and Slocum's list had been, by then, several times carefully revised. Thus, if Respondent is urging that Slocum's testimony was not very reliable, Petitioner has no quarrel with that contention.

In fact, this branch of Respondent's argument very pointedly avoids the obvious. Slocum's list of the miss-

ing coins, the existence of which was known to both Law and Del Coma, could have been appended to an affidavit with the click of a staple. Rather, it is argued that since Slocum's description of the missing coins might have been somewhat inexact, although there is no evidence to support that conclusion, it is therefore better to proceed with no description whatsoever. The statement of the argument provides its own refutation.

One other point is worthy of mention here. If it is assumed that Slocum's list had been appended to an affidavit and a search warrant had been issued thereon, the seizure of evidence which was relevant to this case would not have been possible. It seems clear that all concerned considered the fruit of the September 13 search and its subsequent identification by the Pulatis necessary to demonstrate "cause to arrest" for the Pulati burglary. (A. 234-35) The Pulati identification was grounded on their recognition of medals, tokens, a coin wallet and other non-coin items. (A. 275-84) In contrast with that fact, there is no evidence in the record that Slocum claimed the loss of anything other than coins. Therefore, a search made under warrant for Slocum's missing coins would not have justified seizure of the items which the Pulatis in fact identified, the medals, the tokens, the boxes and the coin wallet.[3] It is therefore clear that the search

[3] This conclusion is not diluted by Petitioner's earlier analysis of *Marron* v. *United States*, 275 U. S. 192 (1927), P. Br. 17-18. The *Marron* ledger was directly related to the crime for which the warrant issued. On this record, no relationship can be spelled out between a theft of coins and a seizure of tokens, medals, boxes, etc. Cf. *Rugendorf* v. *United States*, 376 U. S. 528 (1964) in which the warrant issued for 82 mink, otter and beaver stoles and jackets (none full-length) stolen in Alabama. 81 fur pieces were seized, 59 of which were from the Alabama theft and 22 of which had been stolen in Louisiana.

of September 13, 1965, was a search for which a search warrant could not have been obtained and it resulted in a seizure which would not have been sustainable even if a warrant had issued. Admission into evidence of the fruit of that search has deprived the Petitioner of a right guaranteed to him under the Constitution of the United States.

SECTION II

Considerations of Public Policy Militate Against the Search Which Was Made in This Case.

Respondent suggests (R. Br. 83-100) that a rule requiring the use of search warrants except where exigent circumstances of some sort are demonstrated would shackle the hands of law enforcement, would flood the lower courts with rivers of paper work and would foster a massive burglary wave. This parade of imaginary horribles, although interestingly presented, leaves the reader somewhat unsatisfied for the question is not whether the warrant procedure is desirable. That question was determined on December 15, 1791, when the Fourth Amendment was adopted and is not now open to challenge.

Mr. Justice Bradley, in writing his famous opinion in *Boyd* v. *United States*, 116 U. S. 616 (1886) referred to the contiguity, and sometimes overlapping scope, of the rights guaranteed by the Fourth and Fifth Amendments. 116 U. S. 630. There can be no doubt that law enforcement would be much simpler and easier, more effective and less burdened with paperwork, if the Fifth Amendment were repealed. By like token, the Fourth Amendment is no friend to the policeman. But while those Amendments remain vital and active parts of our living Constitution, it

begs the question to ponder the wisdom of the policies enshrined therein.

The policy which should be in the forefront and the policy to which the Fourth Amendment squarely addresses itself is that essential principle, which is as old as the *Magna Carta*, that the government may not act to deprive its subjects of liberty except through the action of courts constituted for that purpose. Writing of the exclusionary rule in *People* v. *Cahan*, 44 C. 2d 434, 447; 282 P. 2d 905 (1955), Justice Traynor pointed out:

> Experience has demonstrated, however, that neither administrative, criminal nor civil remedies are effective in suppressing lawless searches and seizures. The innocent suffer with the guilty, and we cannot close our eyes to the effect the rule we adopt will have on the rights of those not before the court . . . 'The difficulty with [other remedies] is in part due to the failure of interested parties to inform of the offense. No matter what an illegal raid turns up, police are unlikely to inform on themselves or each other. If it turns up nothing incriminating, the innocent victim usually does not care to take steps which will air the fact that he has been under suspicion.' [Quotation from *Irvine* v. *California*, 347 U. S. 128, 137 (1954)]

Thus, when the police officer is given a blank check to search without warrant, the innocent victim of a lawless search travels a one-way street. He can, if he wishes, pursue a civil action against the officer in which there is a very limited possibility of recovery and which shouts to the world that he has been suspected of crime, or he can go without remedy and hope that his luck will improve in the future.

The Respondent contends that law enforcement will, if left to their own devices, increasingly use the search warrant procedure. (R. Br. 88) An interesting commentary on that contention is provided in a motion to suppress evidence (California Penal Code section 1538.5) made in the case of *People* v. *Crispin Ramirez,* Superior Court, County of Santa Clara, State of California, No. 45854, January 31, 1969. The arresting officer, Officer Erickson, testified:

> Q. So you knocked on the door, a person opened the door, and within three to five seconds you went inside; is that correct? A. That is correct.
>
> Q. You didn't at that time announce that you were there to arrest Crispin Ramirez; is that correct? A. I didn't announce that I was there to arrest Crispin Ramirez.
>
> Q. You were there with the express intention to arrest Crispin Ramirez. A. Yes.
>
> [Page 8]
>
> Q. Did you, in fact, arrest Crispin Ramirez? A. Yes.
>
> Q. After you arrested him, did you take him out of the apartment? A. Yes, sir.
>
> Q. And after he was out of the apartment, was he in fact handcuffed and placed in a patrol car? A. Yes, sir.
>
> Q. After that point in time, Officer, did you in fact go back inside the apartment? A. Yes, sir.
>
> Q. Did you in fact conduct a detailed search of the apartment? A. Yes.
>
> [Page 9]

Q. And, Officer Erickson, had you ever seen Crispin Ramirez at that address before? A. No, sir.

Q. And I take it, to clarify what you did, you went out there three days later because of some information you had learned about these items you had seized on the 23rd; is that correct? A. Correct.

Q. Did it take you that long to get that information? A. Yes, sir, it did.

Q. All right. When you got the information, did you apply for a search warrant or arrest warrant? A. No, sir, I did not.

Q. Why was that? A. I can't—I have never been able to obtain a search warrant. I have never heard of an officer obtaining one. It just isn't done.

[Page 11]

In summary, the Respondent agrees that it is desirable to make greater use of search warrants, this Court has stated that search warrants must, whenever practicable, be used, and the Petitioner urges their use. The Respondent suggests, though, that this desirable end be left to voluntary compliance and not be made mandatory. That suggestion bears more than a passing resemblance to the husband who, faced with an action for divorce and a demand for alimony, pleads:

> Certainly I am anxious to support my wife. I will voluntarily give her more than she needs. But don't embody this in a court order for I would hate to feel that I was required to do this.

This Court has, on facts showing restrained conduct which could have been authorized by a magistrate, required that

antecedent justification be obtained. *Katz* v. *United States*, 389 U. S. 347, 356 (1967). There is no less reason to do so here.

SECTION III

The Admission Into Evidence of the Fruit of the Search Was Beyond Reasonable Doubt Harmful.

Contending that the error in this case was harmless, the Respondent would segment the evidence and view it as though two trials had been had, a separate trial on the Pulati count and a separate trial on the Money Vault count. No matter formal legal theories of pleading and joinder, such an approach overlooks the realities upon which juries decide concrete cases.

First, as to the Pulati count, it is submitted that on the face of the record there was not sufficient evidence to support a finding of "cause for arrest," much less proof of guilt beyond reasonable doubt, in the absence of the fruit of the search of September 13. See p. 9, *supra*.

The argument is then made that since none of the seized coins were identified as having come from the Money Vault, any error in their admission could not have possibly affected the trial on that charge. While this argument has a superficial lure to it, closer scrutiny reveals the tattered fabric from which it is pieced together.

The keystone of Petitioner's defense was Morris Diehl, who testified that Petitioner had, in his presence, purchased the Pulati medals and tokens (Ex. 11-A) at a coin auction in Hawthorne shortly after the Pulati burglary. (A. 298-300) It is clear that if the jury had accepted Diehl's testimony, Petitioner could not have been

convicted of the Pulati count. With rejection of Diehl's testimony, the entire defense began to crumble. Diehl was either deluded or untruthful, reasoned the jury. Either way, Petitioner was necessarily branded with the mark of deception. From there it was a short step to accept the Court's instruction and "reject the whole testimony" of the Petitioner.[4] Therefore, the introduction in evidence of the Pulati coins was convincing enough to the jury to induce disbelief of both Diehl and the Petitioner. That fact, disbelief of the Petitioner, in practical effect deprived him of any defense to the Money Vault count, for his defense rested on his own testimony.

But, on this point, the Money Vault burglary, considered in light of prejudicial error, the testimony of the victim, Slocum, is most interesting.

Most of Slocum's inventory during 1965 was obtained by purchase from other coin dealers. (A. 149) His inventory remained about level during late 1964 and 1965 at something near $19,000. (A. 145) Of his inventory at the time of the burglary, $2,500 (face value) of coins were on deposit in the Independent Bank in Anaheim and were not involved in the burglary. (A. 141) The morning after the burglary, Slocum saw "20, $25,000 worth of coins on the floor." (A. 89) Only his more valuable coins were missing. (A. 94-95) His inventory after the burglary was "in the two or $3,000 figure." (A. 147) Slocum's business showed a net loss for all of 1964 and the first half of 1965. (A. 144) Slocum, in July of 1965, was driving a Volks-

[4] "A witness wilfully false in one material part of his testimony is to be distrusted in others. You may reject the whole testimony of a witness who wilfully has testified falsely as to a material point, unless, from all the evidence, you shall believe the probability of truth favors his testimony in other particulars." (A. 21)

wagen. (A. 350-52) By August of 1965, Slocum was driving a 1965 Cadillac. (A. 185) Petitioner concurs, Slocum's testimony was not very reliable.

It is undoubtedly inappropriate to suggest to an appellate court that it should redetermine facts once found by a jury. Petitioner makes no such contention here. Rather, the evidence mentioned above is directed only to a showing that absent the implied impeachment of Petitioner's testimony which must have taken place in connection with the Pulati count, the evidence given by the "victim" Slocum leaves room for very serious doubt as to whether he was the victim of a burglary or perhaps the perpetrator of an insurance fraud. It is respectfully urged that the admission of the challenged evidence was harmful as a matter of law. *Fahy* v. *Connecticut*, 375 U. S. 85 (1963).

Conclusion

Based upon the foregoing arguments and authorities, and those set forth in Petitioner's Opening Brief, it is respectfully requested that the judgment of the Supreme Court of the State of California be reversed and the case remanded for further appropriate proceedings.

KEITH C. MONROE
Attorney for Petitioner

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IN THE

Supreme Court of the United States

October Term, 1968

No. 770

TED STEVEN CHIMEL,

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STATE OF CALIFORNIA,

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On Writ of Certiorari to the Supreme Court of the State of California

PETITION FOR REHEARING

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37 United States Law Weekly, pp. 4620-22 8

IN THE

Supreme Court of the United States

October Term, 1968

No. 770

TED STEVEN CHIMEL,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

On Writ of Certiorari to the Supreme Court of the State of California

PETITION FOR REHEARING

Respondent respectfully prays the Court to grant a rehearing in the above-entitled case, which was decided on June 23, 1969, and is reported in 37 U.S.L.W. 4613. On June 26, 1969, Mr. Justice Stewart ordered the mandate stayed pending the timely filing and disposition of a petition for rehearing.

ARGUMENT

The Decision of This Court Overruling Harris and Rabinowitz Should Be Reconsidered and Rejected

The Court's decision holds that as a general rule a search incident to arrest is unlawful, and its fruits therefore inadmissible, if the search has extended beyond the person of the arrestee and his reach. In effect the Court has imposed a requirement that, except for searches conducted with a valid consent or in hot pursuit, all searches of premises must be pursuant to a search warrant. In so holding the Court expressly overrules two of its decisions, *United States v. Rabinowitz,* 339 U.S. 56, and *Harris v. United States,* 331 U.S. 145, which have stood for the proposition that the reasonableness of a search depends upon all the circumstances of the case rather than on the practicability of obtaining a search warrant. 37 U.S.L.W. at 4618.

These cases have been relied upon by this Court in recent decisions, *Cooper v. California,* 386 U.S. 58, 62; *Ker v. California,* 374 U.S. 23, 42, and by the various state and federal courts. As Mr. Justice Harlan observed only 12 months prior to the instant decision,

> ". . . an officer arresting on probable cause is entitled to make a very full incidental search,[5] . . . .

"[5]The leading case is United States v. Rabinowitz, 339 U.S. 56."

Sibron v. New York, 392 U.S. 40, 77 (concurring opinion). The time limitations on filing a petition for rehearing preclude the collection and listing of cases from all the States and federal circuits which have been fol-

lowing *Rabinowitz,* but many of these cases are collected in 82 A.L.R. 786 *et seq.,* 74 A.L.R. 1394 *et seq.,* 51 A.L.R. 434 *et seq.,* 32 A.L.R. 697 *et seq.,* and in the A.L.R. Blue Book of Supplemental Decisions to these annotations. Illustrative of the reliance on *Rabinowitz* (*see Abel v. United States,* 362 U.S. 217, 235-36), and therefore of the impact of the Court's decision in the instant case, is the fact that the highest courts in the five States having the greatest population in the last census, and thus presumably the most serious law enforcement problems, have relied upon the dictate of *Rabinowitz* (339 U.S. at 65-66) that the legality of searches of premises "turn[s] upon the reasonableness under all the circumstances and not upon the practicability of procuring a search warrant, for the warrant is not required."

See, e.g.,

People v. Berutko, 71 A.C. 89, 99 (1969) [453 P.2d 721, 727] (California);

People v. Braden, 34 Ill. 2d 516 (1966) [216 N.E. 2d 808, 809] (Illinois);

People v. Loria, 10 N.Y. 2d 368 (1961) [179 N.E. 2d 478, 482] (New York);

State v. Jemison, 14 Ohio St. 2d 47 (1968) [236 N.E. 2d 538, 542] (Ohio), *cert. denied,* 393 U.S. 943;

Commonwealth v. Negri, 414 Pa. 21 (1964) [198 A.2d 595, 600] (Pennsylvania).

The fact that, in the short time in which this petition could be filed, 70% of the States have joined in requesting that the Court's decision in the instant case be reconsidered (see *infra,* pp. 12-14) points out the impact of the decision on the current state of the law.

The District Attorney of Los Angeles County, which has a population of over 7,000,000, has estimated that "as many as 90% of the cases scheduled for trial could be affected in some way" by the Court's decision.[1]

As Mr. Justice Harlan noted in his concurring opinion, the effect of the Court's ruling on local law enforcement is "a factor to which the Court has not alluded." The "federal-state factor" is a crucial one under our form of government, and because of this Court's decisions

> ". . . every change in Fourth Amendment law must now be obeyed by state officials facing widely different problems of local law enforcement. We simply do not know the extent to which cities and towns across the nation are prepared to administer the greatly expanded warrant system which will be required by today's decision; . . . ."
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> *Chimel v. California,* 37 U.S.L.W. 4613, 4618 (concurring opinion).

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[1]Los Angeles Times, January 25, 1969, §1, at 3. District Attorney Evelle J. Younger added:

> " 'Of course, in many of those cases, we will have enough evidence to obtain a conviction without using that evidence which may have been tainted by the Supreme Court decision,' he said.
>
> "The district attorney estimated, however, that 'many, many' cases will be affected to an extent that his deputies may have to move for dismissal of charges for lack of evidence.
>
> ". . . .
>
> "He suggested . . . that if the ruling is made retroactive it could cause an unprecedented, massive log jam in trial courts."
>
> *Supra.*

As Mr. Justice Harlan noted for the Court in *Hoag v. New Jersey*, 356 U.S. 464,

> ". . . it has long been recognized as the very essence of our federalism that the States should have the widest latitude in the administration of their own systems of criminal justice. See Hurtado v. California, 110 U.S. 516; Maxwell v. Dow, 176 U.S. 581; West v. Louisiana, 194 U.S. 258; Twining v. New Jersey, 211 U.S. 78. . . ."
>
> *Supra* at 468.

In invalidating the present search, the Court has struck down a search which was conducted in a totally restrained and reasonable manner as an incident of an arrest whose validity is conceded by petitioner. The Court's conclusion that the search was unreasonable is based solely on the arresting officer's failure to proceed by way of a search warrant when he clearly had sufficient information to obtain one.

Studies of the warrant-issuing process[2] indicate that frequently the protection afforded by warrants is less than that ensured by responsible and restrained enforcement techniques on the part of the police and prosecutors, such as were employed in the present case. Furthermore, the multiple opportunities prior to and during trial to invoke the exclusionary rule illustrate that the choice before this Court is really between (1) burying police, prosecutors, and magistrates in the time-consuming paper work which is necessary to afford the usually sketchy prior judicial review of a search which

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[2]Landynski, Search and Seizure and the Supreme Court 194 (1966); Tiffany, McIntyre, and Rotenberg, Detection of Crime 115, 201, 204 (1967); La Fave, Arrest: The Decision to Take a Suspect Into Custody 15-16, 502-04 (1965).

takes place under search warrant-issuing procedure, and (2) continuing the flexible and more practical rule of judging the reasonableness of a search under all the factual circumstances of the case at a subsequent, meaningful adversary proceeding.

When the police are conceded the right to effect the most basic invasion of a person's privacy imaginable —the seizure of a man's body in arresting him—what additional invasion of privacy is incurred by virtue of the fact that concurrently the man's property (or, as in the present case, his victims' property) is seized as an incident of the arrest instead of by means of a search warrant?

As Mr. Justice Harlan stated in his concurring opinion,

> ". . . nor can we say with assurance that in each and every local situation, the warrant requirement plays an essential role in the protection of those fundamental liberties protected against state infringement by the Fourteenth Amendment."
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> *Chimel v. California,* 37 U.S.L.W. 4613, 4618 (concurring opinion).

The Court's opinion in effect eliminates one of the most basic tools of law enforcement and at the same time greatly restricts the admission of the most reliable type of evidence—physical evidence. In many instances under the Court's ruling, evidence will be held inadmissible because it was not within the "reach" of the suspect at the time it was seized. In other instances the police, forced by the Court's decision to resort almost without exception to the warrant procedure, will have drawn up a detailed search warrant affidavit only to

have it deemed, on subsequent judicial review, to suffer from a fatal flaw. *See Spinelli v. United States*, 393 U.S. 410.

In the context of the present ruling, there is indeed an ironic, if not hollow, sound to the Court's recent pronouncements justifying new rules restricting the obtaining of confessions on the theory that the police should resort instead to other investigative skills and secure physical evidence of the suspect's guilt:

> "We have learned the lesson of history, ancient and modern, that a system of criminal law enforcement which comes to depend on the 'confession' will, in the long run, be less reliable and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation. . . . This Court also has recognized that 'history amply shows that confessions have often been extorted to save law enforcement officials the trouble and effort of obtaining valid and independent evidence. . . .' Haynes v. Washington, 373 U.S. 503, 519." (Footnotes omitted.) *Escobedo v. Illinois*, 378 U.S. 478, 488-90.
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> ". . . As we have noted, our decision does not in any way preclude police from carrying out their traditional investigatory functions. Although confessions may play an important role in some convictions, the cases before us present graphic examples of the overstatement of the 'need' for confessions. In each case authorities conducted interrogations ranging up to five days in duration despite the presence, through standard investigating practices, of considerable evidence against each defendant. . . ." *Miranda v. Arizona*, 384 U.S. 436, 481. *See also supra*, at 447-48.

Brief mention will be made of what respondent considers to be specific errors of omission and commission in the Court's opinion. The general thrust of respondent's position is forcefully stated in the dissenting opinion of Mr. Justice White herein, concurred in by Mr. Justice Black.

The Court's opinion relies greatly on language in *Terry v. Ohio*, 392 U.S. 1, 20, to the effect that prior decisions of the Court had consistently held that advance judicial approval of searches and seizures through the warrant procedure must be obtained whenever "practicable." As pointed out at pages 94-95 of Respondent's Brief in the instant case, this language is sheer dictum unsupported by the cases which are cited for that proposition.

It is disturbing that the Court merely proceeds on the hypothesis that the arrest was valid and refuses to decide that question. (37 U.S.L.W. at 4614.) See *Giordenello v. United States*, 357 U.S. 480, 486. As the dissent points out, there was "doubtless probable cause . . . to arrest petitioner" (37 U.S.L.W. at 4620), a point conceded by petitioner. (Petitioner's Op. Br. p. 28.) The evidence constituting probable cause is set forth by the dissent in 37 U.S.L.W. at 4620 (n. 4). Significantly the dissent dwells at length upon the legality of the arrest, and upon the difficulty in distinguishing between the legality of an arrest on probable cause and the legality of a search for which there is probable cause and which is incident to the lawful arrest on probable cause. 37 U.S.L.W. at 4620-22. From this respondent gathers that the Court has deliberately left itself open, and left other courts open, to apply its reasoning to future cases to hold that where there is time to obtain an arrest war-

rant, a warrantless arrest on probable cause is unlawful and the product of the incidental search of the suspect's person inadmissible.

Two of the major issues in the case are dismissed by the Court in the following footnote:

> "The State has made various subsidiary contentions, including arguments that it would have been unduly burdensome to obtain a warrant specifying the coins to be seized and that introduction of the fruits of the search was harmless error. We reject those contentions as being without merit."

(37 U.S.L.W. at 4618 [n. 16].) Without dwelling at length on these issues respondent wishes to remind the Court that (1) thousands of stolen coins would have had to be described with great specificity in a search warrant affidavit in order to enable a magistrate to conclude that the police would be able to distinguish such coins from other coins known to be lawfully on the premises as part of petitioner's collection, *Stanford v. Texas,* 379 U.S. 476, 485-86; *Marron v. United States,* 275 U.S. 192, 196; *Aday v. Superior Court,* 55 Cal. 2d 789, 795-96 (1961) [362 P.2d 47, 51]; (2) prior to his arrest petitioner had admitted to friends of his that he had committed the present offense. (*See* 37 U.S.L.W. at 4620 and n.4 [dissenting opinion].)

Furthermore, the Court's opinion provides few if any guidelines to law enforcement in meeting practical problems posed by the decision. What is the "reach" of a suspect or "area from within which he might gain possession of a weapon or destructible evidence"? (37

U.S.L.W. at 4616, 4617.) Does this area vary with the physical build of the particular suspect or with his own mobility and dexterity? Is an area which the suspect could reach in three or four quick bounds within his "reach?" If the suspect is temporarily or permanently incapable of "reaching," does this restrict the scope of the search if the officer is aware, or should be aware, of this circumstance? If the suspect is moving through the house, may the officers search those areas which progressively come within his "reach?" If the suspect observes the officers at a distance of 50 feet approaching to arrest him, what is his "reach?" If he is placed in custody but makes an aborted attempt at escape, may the area where he is again restrained be searched to preclude the suspect from arming himself and destroying evidence? What if the moving suspect is out of the officers' line of vision for a short period of time? How does the Court's ruling affect the doctrine that contraband in plain view may be seized since no "search" is involved? May evidence which the suspect seizes and throws beyond the ambit of his "reach" be seized? These questions are not answered by the Court's opinion and promise to plague trial courts and appellate courts with constant problems of definition and distinction under the new rule propounded by the Court.

Since as a general rule the police must knock and announce their presence, it appears that suspects of average intelligence will have only to situate themselves in that part of the room away from the incriminating evidence in order to frustrate the search—or else, in answering the knock at the door, the suspect will in ef-

fect limit the scope of the search to his person and the doorway.

Assuming that the police effecting the arrest will already have sufficient information to obtain a search warrant, or will acquire such by reason of their observations at the time of the arrest (and this is decidedly *not* always the case), one of the most troublesome problems presented is: may the officer summon other officers to ensure that other persons present, or expected, on the premises will not destroy or secrete incriminating evidence while a search warrant is being obtained? What if there are several persons who are not arrested and who remain on the premises? Does this authorize the police to station several officers on the premises and physically to restrain each occupant anytime the occupant approaches any evidence which might readily be disposed of? As pointed out by the dissent (37 U.S.L.W. at 4620 [n.5]), the invasion of the privacy of the other occupants (who are perhaps innocent of any wrongdoing) would be at least as great as that resulting from a warrantless search of the premises incident to the lawful arrest of the suspect.

Also ominous is the fact that the Court's opinion says nothing about whether the decision is to be applied retroactively; in two *per curiam* decisions rendered the same day the Court specifically declines to pass upon the question whether the rule propounded in the present case is to be applied retroactively. *Von Cleef v. New Jersey*, 37 U.S.L.W. 3491; *Shipley v. California*, 37 U.S.L.W. 3492, and the Court makes the gratuitous and somewhat dubious observation that "Rabinowitz and Harris . . . have been relied upon less and less in our own decisions. . . ." (37 U.S.L.W. at 4618.) Re-

spondent would assume that under the compulsion of *Desist v. United States,* 394 U.S. 244, construing the Fourth Amendment principles set forth in *Katz v. United States,* 389 U.S. 347, to apply only to searches conducted after the date of that decision, the rule set forth in the present case clearly would apply only to searches conducted after June 23, 1969.[3]

The underlying weakness in the Court's opinion is succinctly stated by Mr. Justice White:

> "The majority today proscribes searches for which there is probable cause and which may prove fruitless unless carried out immediately. This rule will have no added effect whatsoever in protecting the rights of the criminal accused at trial against introduction of evidence seized without probable cause. Such evidence could not be introduced under the old rule. Nor does the majority today give any added protection to the right of privacy of those whose houses there is probable cause to search. A warrant would still be sworn out for those houses, and the privacy of their owners invaded."
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> *Chimel v. California,* 37 U.S.L.W. 4613, 4622 (dissenting opinion.)

Conclusion

For the foregoing reasons, a rehearing should be granted and the judgment of the California Supreme Court affirmed.

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[3]See also *Halliday v. United States,* 89 S. Ct. 1498; *Fuller v. Alaska,* 393 U.S. 80; *DeStefano v. Woods,* 392 U.S. 631; *Stovall v. Denno,* 388 U.S. 293; *Johnson v. New Jersey,* 384 U.S. 719.

The following States, through their respective Attorneys General, join respondent State of California in requesting that the Court reconsider its ruling herein:

ARIZONA
ARKANSAS
COLORADO
DELAWARE
GEORGIA
ILLINOIS
INDIANA
IOWA
KANSAS
KENTUCKY
LOUISIANA
MARYLAND
MASSACHUSETTS
MINNESOTA
MISSISSIPPI
MISSOURI
MONTANA
NEBRASKA
NEVADA
NEW JERSEY
NEW MEXICO
NORTH CAROLINA
OHIO
OKLAHOMA
OREGON
PENNSYLVANIA
SOUTH DAKOTA

TENNESSEE
TEXAS
UTAH
VERMONT
VIRGINIA
WASHINGTON
WISCONSIN
WYOMING
TERRITORY OF GUAM

Respectfully submitted,

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Attorney General of the State of California,
WILLIAM E. JAMES,
Assistant Attorney General of the State of California,
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Deputy Attorney General of the State of California,

Certificate of Counsel

I certify that this petition is presented in good faith and not for delay.

RONALD M. GEORGE

SUPREME COURT OF THE UNITED STATES

No. 770.—October Term, 1968.

Ted Steven Chimel, Petitioner, v. State of California.	On Writ of Certiorari to the Supreme Court of California.

[June 23, 1969.]

Mr. Justice Stewart delivered the opinion of the Court.

This case raises basic questions concerning the permissible scope under the Fourth Amendment of a search incident to a lawful arrest.

The relevant facts are essentially undisputed. Late in the afternoon of September 13, 1965, three police officers arrived at the Santa Ana, California, home of the petitioner with a warrant authorizing his arrest for the burglary of a coin shop. The officers knocked on the door, identified themselves to the petitioner's wife, and asked if they might come inside. She ushered them into the house, where they waited 10 or 15 minutes until the petitioner returned home from work. When the petitioner entered the house, one of the officers handed him the arrest warrant and asked for permission to "look around." The petitioner objected, but was advised that "on the basis of the lawful arrest," the officers would nonetheless conduct a search. No search warrant had been issued.

Accompanied by the petitioner's wife, the officers then looked through the entire three-bedroom house, including the attic, the garage, and a small workshop. In some rooms the search was relatively cursory. In the master bedroom and sewing room, however, the officers directed the petitioner's wife to open drawers and "to physically move contents of the drawers from side to

side so that [they] might view any items that would have come from [the] burglary." After completing the search, they seized numerous items—primarily coins, but also several medals, tokens, and a few other objects. The entire search took between 45 minutes and an hour.

At the petitioner's subsequent state trial on two charges of burglary, the items taken from his house were admitted into evidence against him, over his objection that they had been unconstitutionally seized. He was convicted, and the judgments of conviction were affirmed by both the California District Court of Appeal, 61 Cal. Rptr. 714, and the California Supreme Court, 68 Cal. 2d 436, 439 P. 2d 333, 67 Cal. Rptr. 421. Both courts accepted the petitioner's contention that the arrest warrant was invalid because the supporting affidavit was set out in conclusory terms,[1] but held that since the arresting officers had procured the warrant "in good faith," and since in any event they had had sufficient information to constitute probable cause for the petitioner's arrest, that arrest had been lawful. From this conclusion the appellate courts went on to hold that the search of the petitioner's home had been justified, despite the absence of a search warrant, on the ground that it had been incident to a valid arrest. We granted certiorari in order to consider the petitioner's substantial constitutional claims. 393 U. S. 958.

Without deciding the question, we proceed on the hypothesis that the California courts were correct in holding that the arrest of the petitioner was valid under the Constitution. This brings us directly to the question whether the warrantless search of the petitioner's entire

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[1] The affidavit supporting the warrant is set out in the opinion of the District Court of Appeal, 61 Cal. Rptr., at 715–716, n. 1, and the State does not challenge its insufficiency under the principles of *Aguilar* v. *Texas*, 378 U. S. 108, and *Spinelli* v. *United States*, 393 U. S. 410.

house can be constitutionally justified as incident to that arrest. The decisions of this Court bearing upon that question have been far from consistent, as even the most cursory review makes evident.

Approval of a warrantless search incident to a lawful arrest seems first to have been articulated by the Court in 1914 as dictum in *Weeks* v. *United States*, 232 U. S. 383, in which the Court stated:

> "What then is the present case? Before answering that inquiry specifically, it may be well by a process of exclusion to state what it is not. It is not an assertion of the right on the part of the Government, always recognized under English and American law, to search the person of the accused when legally arrested to discover and seize the fruits or evidences of crime." *Id.*, at 392.

That statement made no reference to any right to search the *place* where an arrest occurs, but was limited to a right to search the "person." Eleven years later the case of *Carroll* v. *United States*, 267 U. S. 132, brought the following embellishment of the *Weeks* statement:

> "When a man is legally arrested for an offense, whatever is found upon his person *or in his control* which it is unlawful for him to have and which may be used to prove the offense may be seized and held as evidence in the prosecution." *Id.*, at 158. (Emphasis added.)

Still, that assertion too was far from a claim that the "place" where one is arrested may be searched so long as the arrest is valid. Without explanation, however, the principle emerged in expanded form a few months later in *Agnello* v. *United States*, 269 U. S. 20—although still by way of dictum:

> "The right without a search warrant contemporaneously to search persons lawfully arrested while

committing crime and to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits or as the means by which it was committed, as well as weapons and other things to effect an escape from custody, is not to be doubted. See *Carroll* v. *United States*, 267 U. S. 132, 158; *Weeks* v. *United States*, 232 U. S. 383, 392." 269 U. S., at 30.

And in *Marron* v. *United States*, 275 U. S. 192, two years later, the dictum of *Agnello* appeared to be the foundation of the Court's decision. In that case federal agents had secured a search warrant authorizing the seizure of liquor and certain articles used in its manufacture. When they arrived at the premises to be searched, they saw "that the place was used for retailing and drinking intoxicating liquors." *Id.*, at 194. They proceeded to arrest the person in charge and to execute the warrant. In searching a closet for the items listed in the warrant they came across an incriminating ledger, concededly not covered by the warrant, which they also seized. The Court upheld the seizure of the ledger by holding that since the agents had made a lawful arrest, "[t]hey had a right without a warrant contemporaneously to search the place in order to find and seize the things used to carry on the criminal enterprise." *Id.*, at 199.

That the *Marron* opinion did not mean all that it seemed to say became evident, however, a few years later in *Go-Bart Importing Co.* v. *United States*, 282 U. S. 344, and *United States* v. *Lefkowitz*, 285 U. S. 452. In each of those cases the opinion of the Court was written by Mr. Justice Butler, who had authored the opinion in *Marron*. In *Go-Bart*, agents had searched the office of persons whom they had lawfully arrested,[2] and had taken several papers from a desk, a safe, and other

[2] The Court assumed that the arrests were lawful. 282 U. S., at 356.

parts of the office. The Court noted that no crime had been committed in the agents' presence, and that although the agent in charge "had an abundance of information and time to swear out a valid [search] warrant, he failed to do so." 282 U. S., at 358. In holding the search and seizure unlawful, the Court stated:

> "Plainly the case before us is essentially different from *Marron* v. *United States,* 275 U. S. 192. There, officers executing a valid search warrant for intoxicating liquors found and arrested one Birdsall who in pursuance of a conspiracy was actually engaged in running a saloon. As an incident to the arrest they seized a ledger in a closet where the liquor or some of it was kept and some bills beside the cash register. These things were visible and accessible and in the offender's immediate custody. There was no threat of force or general search or rummaging of the place." 282 U. S., at 358.

This limited characterization of *Marron* was reiterated in *Lefkowitz,* a case in which the Court held unlawful a search of desk drawers and a cabinet despite the fact that the search had accompanied a lawful arrest. 285 U. S., at 465.

The limiting views expressed in *Go-Bart* and *Lefkowitz* were thrown to the winds, however, in *Harris* v. *United States,* 331 U. S. 145, decided in 1947. In that case, officers had obtained a warrant for Harris' arrest on the basis of his alleged involvement with the cashing and interstate transportation of a forged check. He was arrested in the living room of his four-room apartment, and in an attempt to recover two canceled checks thought to have been used in effecting the forgery, the officers undertook a thorough search of the entire apartment. Inside a desk drawer they found a sealed envelope marked "George Harris, personal papers." The envelope, which was then torn open, was found to contain altered

selective service documents, and those documents were used to secure Harris' conviction for violating the Selective Training and Service Act of 1940. The Court rejected Harris' Fourth Amendment claim, sustaining the search as "incident to arrest." *Id.*, at 151.

Only a year after *Harris*, however, the pendulum swung again. In *Trupiano* v. *United States*, 334 U. S. 699, agents raided the site of an illicit distillery, saw one of several conspirators operating the still, and arrested him, contemporaneously "seiz[ing] the illicit distillery." *Id.*, at 702. The Court held that the arrest and others made subsequently had been valid, but that the unexplained failure of the agents to procure a search warrant—in spite of the fact that they had had more than enough time before the raid to do so—rendered the search unlawful. The opinion stated:

> "It is a cardinal rule that, in seizing goods and articles, law enforcement agents must secure and use search warrants wherever reasonably practicable. . . . This rule rests upon the desirability of having magistrates rather than police officers determine when searches and seizures are permissible and what limitations should be placed upon such activities. . . . To provide the necessary security against unreasonable intrusions upon the private lives of individuals, the framers of the Fourth Amendment required adherence to judicial processes wherever possible. And subsequent history has confirmed the wisdom of that requirement.
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> . . . . . .
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> "A search or seizure without a warrant as an incident to a lawful arrest has always been considered to be a strictly limited right. It grows out of the inherent necessities of the situation at the time of the arrest. But there must be something more in the way of necessity than merely a lawful arrest." *Id.*, at 705, 708.

In 1950, two years after *Trupiano*,[3] came *United States* v. *Rabinowitz*, 339 U. S. 56, the decision upon which California primarily relies in the case now before us. In *Rabinowitz*, federal authorities had been informed that the defendant was dealing in stamps bearing forged overprints. On the basis of that information they secured a warrant for his arrest, which they executed at his one-room business office. At the time of the arrest, the officers "searched the desk, safe, and file cabinets in the office for about an hour and a half," *id.*, at 59, and seized 573 stamps with forged overprints. The stamps were admitted into evidence at the defendant's trial, and this Court affirmed his conviction, rejecting the contention that the warrantless search had been unlawful. The Court held that the search in its entirety fell within the principle giving law enforcement authorities "[t]he right 'to search the place where the arrest is made in order to find and seize things connected with the crime . . . .'" *Id.*, at 61. *Harris* was regarded as "ample authority" for that conclusion. *Id.*, at 63. The opinion rejected the rule of *Trupiano* that "in seizing goods and articles, law enforcement agents must secure and use search warrants wherever reasonably practicable." The test, said the Court, "is not whether it is reasonable to procure a search warrant, but whether the search was reasonable." *Id.*, at 66.

Rabinowitz has come to stand for the proposition, *inter alia*, that a warrantless search "incident to a lawful arrest" may generally extend to the area that is considered to be in the "possession" or under the "control" of the person arrested.[4] And it was on the basis

[3] See also *McDonald* v. *United States*, 335 U. S. 451.

[4] Decisions of this Court since *Rabinowitz* have applied the abstract doctrine of that case to various factual situations with divergent results. Compare *Ker* v. *California*, 374 U. S. 23, 42; *Abel* v. *United States*, 362 U. S. 217; and *Draper* v. *United States*, 358 U. S. 307, with *Kremen* v. *United States*, 353 U. S. 346 (*per*

of that proposition that the California courts upheld the search of the petitioner's entire house in this case. That doctrine, however, at least in the broad sense in which it was applied by the California courts in this case, can withstand neither historical nor rational analysis.

Even limited to its own facts, the *Rabinowitz* decision was, as we have seen, hardly founded on an unimpeachable line of authority. As Mr. Justice Frankfurter commented in dissent in that case, the "hint" contained in *Weeks* was, without persuasive justification, "loosely turned into dictum and finally elevated to a decision." 339 U. S., at 75. And the approach taken in cases such as *Go-Bart*, *Lefkowitz*, and *Trupiano* was essentially disregarded by the *Rabinowitz* Court.

Nor is the rationale by which the State seeks here to sustain the search of the petitioner's house supported by a reasoned view of the background and purpose of the Fourth Amendment. Mr. Justice Frankfurter wisely pointed out in his *Rabinowitz* dissent that the Amendment's proscription of "unreasonable searches and seizures" must be read in light of "the history that gave rise to the words"—a history of "abuses so deeply felt by the Colonies as to be one of the potent causes of the Revolution . . . ." 339 U. S., at 69. The Amendment was in large part a reaction to the general warrants and warrantless searches that had so alienated the colonists and had helped speed the movement for independence.[5] In the scheme of the Amendment, therefore, the requirement that "no Warrants shall issue, but upon probable

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curiam). Cf. *Chapman* v. *United States*, 365 U. S. 610; *Jones* v. *United States*, 357 U. S. 493, 499–500.

[5] See generally *Boyd* v. *United States*, 116 U. S. 616, 624–625; *Weeks* v. *United States*, 232 U. S. 383, 389–391; *Davis* v. *United States*, 328 U. S. 582, 603–605 (dissenting opinion); *Harris* v. *United States*, 331 U. S. 145, 157–162 (dissenting opinion); *Stanford* v. *Texas*, 379 U. S. 476, 481–482.

cause," plays a crucial part. As the Court put it in *McDonald* v. *United States*, 335 U. S. 451:

> "We are not dealing with formalities. The presence of a search warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. This was done not to shield criminals nor to make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade that privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals. . . . And so the Constitution requires a magistrate to pass on the desires of the police before they violate the privacy of the home. We cannot be true to that constitutional requirement and excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate that the exigencies of the situation made that course imperative." *Id.*, at 455–456.

Even in the *Agnello* case the Court relied upon the rule that "[b]elief, however well founded, that an article sought is concealed in a dwelling house furnishes no justification for a search of that place without a warrant. And such searches are held unlawful notwithstanding facts unquestionably showing probable cause." 269 U. S., at 33. Clearly, the general requirement that a search warrant be obtained is not lightly to be dispensed with, and "the burden is on those seeking [an] exemption [from the requirement] to show the need for it . . . ." *United States* v. *Jeffers*, 342 U. S. 48, 51.

Only last Term in *Terry* v. *Ohio*, 392 U. S. 1, we emphasized that "the police must, whenever practicable,

obtain advance judicial approval of searches and seizures through the warrant procedure," *id.*, at 20;[6] and that "[t]he scope of [a] search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible." *Id.*, at 19. The search undertaken by the officer in that "stop and frisk" case was sustained under that test, because it was no more than a "protective . . . search for weapons." *Id.*, at 29. But in a companion case, *Sibron* v. *New York*, 392 U. S. 40, we applied the same standard to another set of facts and reached a contrary result, holding that a policeman's action in thrusting his hand into a suspect's pocket had been neither motivated by nor limited to the objective of protection.[7] Rather, the search had been made in order to find narcotics, which were in fact found.

A similar analysis underlies the "search incident to arrest" principle, and marks its proper extent. When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of

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[6] See also *Davis* v. *Mississippi*, — U. S. —, —; *Katz* v. *United States*, 389 U. S. 347, 356–358; *Warden* v. *Hayden*, 387 U. S. 294, 299; *Preston* v. *United States*, 376 U. S. 364, 367.

[7] Our *Sibron* opinion dealt with two cases. We refer here to No. 63, involving the appellant Sibron. See *infra*, p. —.

the arrestee's person and the area "within his immediate control"—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.

There is no comparable justification, however, for routinely searching rooms other than that in which an arrest occurs—or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself. Such searches, in the absence of well-recognized exceptions, may be made only under the authority of a search warrant.[8] The "adherence to judicial processes" mandated by the Fourth Amendment requires no less.

This is the principle that underlay our decision in *Preston* v. *United States,* 376 U. S. 364. In that case three men had been arrested in a parked car, which had later been towed to a garage and searched by police. We held the search to have been unlawful under the Fourth Amendment, despite the contention that it had been incidental to a valid arrest. Our reasoning was straightforward:

> "The rule allowing contemporaneous searches is justified, for example, by the need to seize weapons and other things which might be used to assault an officer or effect an escape, as well as by the need to prevent the destruction of evidence of the crime—things which might easily happen where the weapon or evidence is on the accused's person or under his immediate control. But these justifications are absent where a search is remote in time or place from the arrest." *Id.,* at 367.[9]

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[8] See *Katz* v. *United States,* 389 U. S. 347, 357–358.

[9] Our holding today is of course entirely consistent with the recognized principle that, assuming the existence of probable cause, automobiles and other vehicles may be searched without warrants "where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which

The same basic principle was reflected in our opinion last Term in *Sibron*. That opinion dealt with *Peters* v. *New York*, No. 74, as well as with Sibron's case, and *Peters* involved a search that we upheld as incident to a proper arrest. We sustained the search, however, only because its scope had been "reasonably limited" by the "need to seize weapons" and "to prevent the destruction of evidence," to which *Preston* had referred. We emphasized that the arresting officer "did not engage in an unrestrained and thoroughgoing examination of Peters and his personal effects. He seized him to cut short his flight, and he searched him primarily for weapons." 392 U. S., at 67.

It is argued in the present case that it is "reasonable" to search a man's house when he is arrested in it. But that argument is founded on little more than a subjective view regarding the acceptability of certain sorts of police conduct, and not on considerations relevant to Fourth Amendment interests. Under such an unconfined analysis, Fourth Amendment protection in this area would approach the evaporation point. It is not easy to explain why, for instance, it is less subjectively "reasonable" to search a man's house when he is arrested on his front lawn—or just down the street—than it is when he happens to be in the house at the time of arrest.[10] As Mr. Justice Frankfurter put it:

> "To say that the search must be reasonable is to require some criterion of reason. It is no guide at

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the warrant must be sought." *Carroll* v. *United States*, 267 U. S. 132, 153; see *Brinegar* v. *United States*, 338 U. S. 160.

[10] Some courts have carried the *Rabinowitz* approach to just such lengths. See, *e. g.*, *Clifton* v. *United States*, 224 F. 2d 329 (C. A. 4th Cir.), cert. denied, 350 U. S. 894 (purchaser of illicit whiskey arrested in back yard of seller; search of one room of house sustained); *United States* v. *Jackson*, 149 F. Supp. 937 (D. C. D. C.), rev'd on other grounds, 102 U. S. App. D. C. 109, 250 F. 2d 772)

> all either for a jury or for district judges or the police to say that an 'unreasonable search' is forbidden—that the search must be reasonable. What is the test of reason which makes a search reasonable? The test is the reason underlying and expressed by the Fourth Amendment: the history and the experience which it embodies and the safeguards afforded by it against the evils to which it was a response." *United States* v. *Rabinowitz*, 339 U. S., at 83 (dissenting opinion).

Thus, although "[t]he recurring questions of the reasonableness of searches" depend upon "the facts and circumstances—the total atmosphere of the case," *id.*, at 63, 66 (opinion of the Court), those facts and circumstances must be viewed in the light of established Fourth Amendment principles.

It would be possible, of course, to draw a line between *Rabinowitz* and *Harris* on the one hand, and this case on the other. For *Rabinowitz* involved a single room, and *Harris* a four-room apartment, while in the case before us an entire house was searched. But such a distinction would be highly artificial. The rationale that allowed the searches and seizures in *Rabinowitz* and *Harris* would allow the searches and seizures in this case. No consideration relevant to the Fourth Amendment suggests any point of rational limitation, once the search is allowed to go beyond the area from which the person arrested might obtain weapons or evidentiary items.[11]

(suspect arrested half a block from his rented room; search of room upheld). But see *James* v. *Louisiana*, 382 U. S. 36 (*per curiam*).

[11] Cf. Mr. Justice Jackson's dissenting comment in *Harris*:

"The difficulty with this problem for me is that once the search is allowed to go beyond the person arrested and the objects upon him or in his immediate physical control, I see no practical limit short of that set in the opinion of the Court—and that means to me no limit at all." 331 U. S., at 197.

The only reasoned distinction is one between a search of the person arrested and the area within his reach on the one hand, and more extensive searches on the other.[12]

The petitioner correctly points out that one result of decisions such as *Rabinowitz* and *Harris* is to give law enforcement officials the opportunity to engage in searches not justified by probable cause, by the simple expedient of arranging to arrest suspects at home rather than elsewhere. We do not suggest that the petitioner is necessarily correct in his assertion that such a strategy was utilized here,[13] but the fact remains that had he

[12] It is argued in dissent that so long as there is probable cause to search the place where an arrest occurs, a search of that place should be permitted even though no search warrant has been obtained. This position seems to be based principally on two premises: first, that once an arrest has been made, the additional invasion of privacy stemming from the accompanying search is "relatively minor"; and second, that the victim of the search may "shortly thereafter" obtain a judicial determination of whether the search was justified by probable cause. With respect to the second premise, one may initially question whether all of the States in fact provide the speedy suppression procedures the dissent assumes. More fundamentally, however, we cannot accept the view that Fourth Amendment interests are vindicated so long as "the rights of the criminal" are "protect[ed] . . . against introduction of evidence seized without probable cause." The Amendment is designed to prevent, not simply to redress, unlawful police action. In any event, we cannot join in characterizing the invasion of privacy that results from a top-to-bottom search of a man's house as "minor." And we can see no reason why, simply because some interference with an individual's privacy and freedom of movement has lawfully taken place, further intrusions should automatically be allowed despite the absence of a warrant that the Fourth Amendment would otherwise require.

[13] Although the warrant was issued at 10:39 a. m. and the arrest was not made until late in the afternoon, the State suggests that the delay is accounted for by normal police procedures and by the heavy workload of the officer in charge. In addition, that officer testified that he and his colleagues went to the petitioner's house "to keep from approaching him at his place of business to cause him any problem there."

been arrested earlier in the day, at his place of employment rather than at home, no search of his house could have been made without a search warrant. In any event, even apart from the possibility of such police tactics, the general point so forcefully made by Judge Learned Hand in *United States* v. *Kirschenblatt*, 16 F. 2d 202, remains:

> "After arresting a man in his house, to rummage at will among his papers in search of whatever will convict him, appears to us to be indistinguishable from what might be done under a general warrant; indeed, the warrant would give more protection, for presumably it must be issued by a magistrate. True, by hypothesis the power would not exist, if the supposed offender were not found on the premises; but it is small consolation to know that one's papers are safe only so long as one is not at home." *Id.*, at 203.

Rabinowitz and *Harris* have been the subject of critical commentary for many years,[14] and have been relied upon less and less in our own decisions.[15] It is time, for the reasons we have stated, to hold that on their own facts, and insofar as the principles they stand for are inconsistent with those that we have endorsed today, they are no longer to be followed.

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[14] See, *e. g.*, J. Landynski, Search and Seizure and the Supreme Court 87–117 (1966); Way, Increasing Scope of Search Incidental to Arrest, 1959 Wash. U. L. Q. 261; Note, Scope Limitations for Searches Incident to Arrest, 78 Yale L. J. 433 (1969); Note, The Supreme Court 1966 Term, 81 Harv. L. Rev. 69, 117–122 (1967).

[15] Cf. *Dyke* v. *Taylor Implement Mfg. Co.*, 391 U.S. 216, 220; *Katz* v. *United States*, 389 U. S., at 357–358, n. 20; *Warden* v. *Hayden*, 387 U. S., at 299; *Stoner* v. *California*, 376 U. S. 483, 487. But see *Cooper* v. *California*, 386 U. S. 58, 62; *Ker* v. *California*, 374 U. S., at 42 (opinion of Clark, J.); cf. *Beck* v. *Ohio*, 379 U. S. 89, 91; *Abel* v. *United States*, 362 U. S., at 236–239; *Giordenello* v. *United States*, 357 U. S. 480, 488.

Application of sound Fourth Amendment principles to the facts of this case produces a clear result. The search here went far beyond the petitioner's person and the area from within which he might have obtained either a weapon or something that could have been used as evidence against him. There was no constitutional justification, in the absence of a search warrant, for extending the search beyond that area. The scope of the search was, therefore, "unreasonable" under the Fourth and Fourteenth Amendments, and the petitioner's conviction cannot stand.[16]

Reversed.

[16] The State has made various subsidiary contentions, including arguments that it would have been unduly burdensome to obtain a warrant specifying the coins to be seized and that introduction of the fruits of the search was harmless error. We reject those contentions as being without merit.

SUPREME COURT OF THE UNITED STATES

No. 770.—October Term, 1968.

Ted Steven Chimel, Petitioner, v. State of California.	On Writ of Certiorari to the Supreme Court of California.

[June 23, 1969.]

Mr. Justice Harlan, concurring.

I join the Court's opinion with these remarks concerning a factor to which the Court has not alluded.

The only thing that has given me pause in voting to overrule *Harris* and *Rabinowitz* is that as a result of *Mapp* v. *Ohio*, 367 U. S. 643 (1961), and *Ker* v. *California*, 374 U. S. 23 (1963), every change in Fourth Amendment law must now be obeyed by state officials facing widely different problems of local law enforcement. We simply do not know the extent to which cities and towns across the Nation are prepared to administer the greatly expanded warrant system which will be required by today's decision; nor can we say with assurance that in each and every local situation, the warrant requirement plays an essential role in the protection of those fundamental liberties protected against state infringement by the Fourteenth Amendment.

Thus, one is now faced with the dilemma, envisioned in my dissent to *Ker*, 374 U. S. 23, at 45–46, of choosing between vindicating sound Fourth Amendment principles at the possible expense of state concerns, long recognized to be consonant with the Fourteenth Amendment before *Mapp* and *Ker* came on the books, or diluting the Federal Bill of Rights in the interest of leaving the States at least some elbow room in their methods of criminal law enforcement. No comparable dilemma exists, of course,

with respect to the impact of today's decision within the federal system itself.

This federal-state factor has not been an easy one for me to resolve, but in the last analysis I cannot in good conscience vote to perpetuate bad Fourth Amendment law.

I add only that this case, together with *Benton* v. *Maryland* (No. 201, *ante*, at ——), *Pearce* v. *North Carolina* (No. 413, *ante*, at ——), and *Simpson* v. *Rice* (No. 418, *ante*, at ——), all decided today, serve to point up, as few other cases have, the profound changes that the "incorporation doctrine" has wrought both in the workings of our federal system and upon the adjudicative processes of this Court.

SUPREME COURT OF THE UNITED STATES

No. 770.—October Term, 1968.

Ted Steven Chimel, Petitioner, *v.* State of California.	On Writ of Certiorari to the Supreme Court of California.

[June 23, 1969.]

Mr. Justice White, with whom Mr. Justice Black joins, dissenting.

Few areas of the law have been as subject to shifting constitutional standards over the last 50 years as that of the search "incident to an arrest." There has been a remarkable instability in this whole area, which has seen at least four major shifts in emphasis. Today's opinion makes an untimely fifth. In my view, the Court should not now abandon the old rule.

I.

The modern odyssey of doctrine in this field is detailed in the majority opinion. It began with *Weeks* v. *United States*, 232 U. S. 383 (1914), where the Court paused to note what the case before it was not. "It is not an assertion of the right on the part of the Government, always recognized under English and American law, to search the person of the accused when legally arrested to discover and seize the fruits or evidences of crime. This right has been uniformly maintained in many cases. . . . Nor is it the case of burglar's tools or other proofs of guilt found upon his arrest *within the control of the accused.*" *Id.*, at 392. (Emphasis added.) This scope of search incident to arrest, extending to all items under the suspect's "control," was reaffirmed in a dictum in *Carroll* v. *United States*, 267 U. S. 132, 158 (1925). Accord, *Agnello* v. *United States*, 269 U. S. 20, 30–31 (1925) (holding that "the place where the arrest is

made" may be searched "is not to be doubted"). The rule was reaffirmed in *Marron* v. *United States*, 275 U. S. 192, 199 (1927), where the Court asserted that authority to search incident to an arrest "extended to all parts of the premises used for the unlawful purpose."

Within four years, this rule was qualified by two Prohibition Act cases, *Go-Bart Importing Co.* v. *United States*, 282 U. S. 344, 356–358 (1931), and *United States* v. *Lefkowitz*, 285 U. S. 452, 463–467 (1932).

If *Go-Bart* and *Lefkowitz* represented a retreat from the rule of *Weeks*, *Carroll*, *Agnello*, and *Marron*, the vigor of the earlier rule was reaffirmed in *Harris* v. *United States*, 331 U. S. 145 (1947) which has, but for one brief interlude, clearly been the law until today. The very next Term after *Harris*, in *Trupiano* v. *United States*, 334 U. S. 699 (1948), the Court held unjustifiable the seizure of a still incident to the arrest of a man at the still site, even though the still was contraband, had been visible through an open door before entering the premises to be "searched," and although a crime was being committed in the officers' presence. Accord, that year, *McDonald* v. *United States*, 335 U. S. 451 (1948) (gambling game seen through transom before entry). Two years later, however, the Court returned to the *Harris* rule in *United States* v. *Rabinowitz*, 339 U. S. 56 (1950), where the Court held that the reasonableness of a search does not depend upon the practicability of obtaining a search warrant, and that the fact of a valid arrest is relevant to reasonableness. *Trupiano* was *pro tanto* overruled.

Such rapid reversals had occurred before,[1] but they are rare. Here there had been two about-faces, one

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[1] *Murdock* v. *Pennsylvania*, 319 U. S. 105 (1943) overruled *Jones* v. *Opelika*, 316 U. S. 584 (1942); *The Legal Tender Cases*, 12 Wall. 457 (1871) overruled *Hepburn* v. *Griswold*, 8 Wall. 603 (1870).

following hard upon the other. Justice Frankfurter objected in this language: "Especially ought the Court not reenforce needlessly the instabilities of our day by giving fair ground for the belief that Law is the expression of chance—for instance, of unexpected changes in the Court's composition and the contingencies in the choice of successors." 339 U. S., at 86. Since that time, the rule of *Weeks*, *Marron*, *Harris*, and *Rabinowitz* has clearly been the law. *E. g.*, *Abel* v. *United States*, 362 U. S. 217 (1960) (Frankfurter, J., writing for the Court); *Ker* v. *California*, 374 U. S. 23 (1963).[2]

II.

The rule which has prevailed, but for very brief or doubtful periods of aberration, is that a search incident to an arrest may extend to those areas under the control of the defendant and where items subject to constitutional seizure may be found. The justification for this rule must, under the language of the Fourth Amendment, lie in the reasonableness of the rule. *Terry* v. *Ohio*, 392 U. S. 1, 9 (1968); *Sibron* v. *New York*, 392 U. S. 40 (1968); *Elkins* v. *United States*, 364 U. S. 206, 222, (1960). The Amendment provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

[2] The majority cites *Kremen* v. *United States*, 353 U. S. 346 (1957), as suggesting an inconsistency. There, however, in a *per curiam* opinion the Court merely overturned a general search in which the entire contents of a cabin, which it took 11 pages of fine print for the Court to inventory, were seized. See *Abel* v. *United States*, 362 U. S. 217, 239 (1960) (*Kremen* distinguished as a "mass seizure").

In terms, then, the Court must decide whether a given search is reasonable. The Amendment does not proscribe "warrantless searches" but instead it proscribes "unreasonable searches" and this Court has never held nor does the majority today assert that warrantless searches are necessarily unreasonable.

Applying this reasonableness test to the area of searches incident to arrests, one thing is clear at the outset. Search of an arrested man and of the items within his immediate reach must in almost every case be reasonable. There is always a danger that the suspect will try to escape, seizing concealed weapons with which to overpower and injure the arresting officers, and there is a danger that he may destroy evidence vital to the prosecution. Circumstances in which these justifications would not apply are sufficiently rare that inquiry is not made into searches of this scope, which have been considered reasonable throughout.

The justifications which make such a search reasonable obviously do not apply to the search of areas to which the accused does not have ready physical access. This is not enough, however, to prove such searches unconstitutional. The Court has always held, and does not today deny, that when there is probable cause to search and it is "impracticable" for one reason or another to get a search warrant, then a warrantless search may be reasonable. *E. g.*, even *Trupiano* v. *United States*, 334 U. S. 699 (1948). This is the case whether an arrest was made at the time of the search or not.[3]

This is not to say that a search can be reasonable without regard to the probable cause to believe that seizable items are on the premises. But when there

[3] Even Mr. Justice Frankfurter, joined in dissent in *Rabinowitz* by Mr. Justice Jackson, admitted that there was an exception to the search-warrant requirement in cases of necessity, and noted that this applied, for example, to vehicles which could readily be moved. 339 U. S. 56, at 73.

are exigent circumstances, and probable cause, then the search may be made without a warrant, reasonably. An arrest itself may often create an emergency situation making it impracticable to obtain a warrant before embarking on a related search. Again assuming that there is probable cause to search premises at the spot where a suspect is arrested, it seems to me unreasonable to require the police to leave the scene in order to obtain a search warrant when they are already legally there to make a valid arrest and when there must almost always be a strong possibility that confederates of the arrested man will in the meanwhile remove the items for which the police have probable cause to search. This must so often be the case that it seems to me as unreasonable to require a warrant for a search of the premises as to require a warrant for search of the person and his very immediate surroundings.

This case provides a good illustration of my point that it is unreasonable to require police to leave the scene of an arrest in order to obtain a search warrant when they already have probable cause to search and there is a clear danger that the items for which they may reasonably search will be removed before they return with a warrant. Petitioner was arrested in his home after an arrest whose validity will be explored below, but which I will now assume was valid. There was doubtless probable cause not only to arrest petitioner, but to search his house. He had obliquely admitted both to a neighbor, and to the owner of the burglarized store, that he had committed the burglary.[4] In light

[4] Before the burglary of the coin store, petitioner had told its owner that he was planning a big robbery, had inquired about the alarm system in the store, the state of the owner's insurance, and the location of the owner's most valuable coins. Petitioner wandered about the store the day before the burglary. After the burglary, petitioner called the store's owner and accused him of robbing the store himself for the insurance proceeds on a policy which, as

of this, and the fact that the neighbor had seen other admittedly stolen property in petitioner's house, there was surely probable cause on which a warrant could have issued to search the house for the stolen coins. Moreover, had the police simply arrested petitioner, taken him off to the station house, and later returned with a warrant,[5] it seems very likely that petitioner's wife, who in view of petitioner's generally garrulous nature must have known of the robbery, would have removed the coins. For the police to search the house while the evidence they had probable cause to search out and seize was still there cannot be considered unreasonable.[6]

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petitioner knew, had just been reduced from $50,000 to $10,000 coverage. On being told that the robbery had been sloppy, petitioner excitedly claimed that it had been "real professional" but then denied the robbery. On the night of the robbery itself petitioner declined an invitation to a bicycle ride, saying he was "going to knock over a place" and that a coin shop was "all set." After the robbery, he told the same neighbor that he had started to break into the coin shop, but had stopped, and then denied the whole incident. The neighbor had earlier seen stacks of typewriters in petitioner's house. Asked whether they were "hot" petitioner replied, "Hotter than a $3 bill." On reading a newspaper description of the coin store burglary, the neighbor called the police.

[5] There were three officers at the scene of the arrest, one from the city where the coin burglary had occurred, and two from the city where the arrest was made. Assuming that one policeman from each city would be needed to bring the petitioner in and obtain a search warrant, one policeman could have been left to guard the house. However, if he not only could have remained in the house against petitioner's wife's will, but followed her about to assure that no evidence was being tampered with, the invasion of her privacy would be almost as great as that accompanying an actual search. Moreover, had the wife summoned an accomplice, one officer could not have watched them both.

[6] A second arrest and search of petitioner's house occurred three days later. It relates to an entirely separate robbery of which petitioner was separately convicted and for which he was concurrently sentenced. Since no evidence was seized in the second search,

III.

This line of analysis, supported by the precedents of this Court, hinges on two assumptions. One is that the arrest of petitioner without a valid warrant [7] was constitutional as the majority assumes; the other is that the police were not required to obtain a search warrant in advance, even though they knew that the effect of the arrest might well be to alert petitioner's wife that the coins had better be removed soon. Thus it is necessary to examine the constitutionality of the arrest since if it was illegal, the exigent circumstances which it created may not, as the consequences of a lawless act, be used to justify the contemporaneous warrantless search. But for the arrest, the warrantless search may not be justified.[8] And if circumstances can justify the warrantless arrest, it would be strange to say that the Fourth Amendment bars the warrantless search, regardless of the circumstances, since the invasion and disruption of a man's life and privacy which stem from his arrest are ordinarily far greater than the relatively minor intrusions attending a search of his premises.

Congress has expressly authorized a wide range of officials to make arrests without any warrant in criminal cases. United States Marshals have long had this power,[9] which is also vested in the agents of the Federal

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nor did it in any way affect petitioner's trial so far as the record discloses, there is no occasion to consider its propriety.

[7] An arrest warrant was in fact issued, but it was issued on an inadequate supporting affidavit and was therefore invalid, so that the case must be considered as though no warrant had issued.

[8] This in turn assumes that where it is practicable to obtain a search warrant and the search is not contemporaneous with an arrest, a warrant must be obtained to validate the search. This is the holding of past cases and I do not question it.

[9] Act of June 15, 1935, c. 259, § 2, 49 Stat. 378, as amended, 18 U. S. C. § 3053.

Bureau of Investigation,[10] and in the Secret Service [11] and the narcotics law enforcement agency.[12] That warrantless arrest power may apply even when there is time to get a warrant without fear that the suspect may escape is made perfectly clear by the legislative history of the statute granting arrest power to the FBI.

In *United States* v. *Coplon*, 185 F. 2d 629, 633–636 (C. A. 2d Cir. 1950), the court held that an arrest and search were invalid because there was an insufficient showing of danger of escape, and therefore there was time to obtain a warrant. The opinion, written by Judge Learned Hand and joined by Judges Swan and Frank, reviewed the common-law power of arrest, which permitted arrests for felonies committed in the past "if [the officer] had reasonable ground to suppose that the person arrested had committed the felony." However, the court concluded that this power of warrantless arrest had been limited by the congressional requirement that there must be a "likelihood of the person escaping before a warrant can be obtained for his arrest."

The next month the Congress was moved by this very decision to amend the law, consciously deleting the language upon which Judge Hand had relied so as to make it clear that warrantless arrests were authorized even if there was time to procure a warrant. Act of January 10, 1951, c. 1221, § 1, 64 Stat. 1239; H. R. Rep. No. 3228, 81st Cong., 2d Sess. (1950).[13] Thereupon, the Court of Appeals for the District of Columbia, passing on the very same arrest which had induced the congressional

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[10] Act of June 18, 1934, c. 595, 48 Stat. 1008, as amended, 18 U. S. C. § 3052.

[11] Pub. L. 89–218, 79 Stat. 890, as amended, 18 U. S. C. § 3056.

[12] Act of July 18, 1956, Tit. I, § 104 (a), 70 Stat. 570, as amended, 26 U. S. C. § 7607 (2).

[13] Congress' expedition was possible partly because the same change had earlier been approved by a Senatorial committee. S. Rep. No. 2464, 81st Cong., 2d Sess. (1950).

action, held that this "unmistakable" revision made it clear that there was in the FBI a power to arrest without warrant even when there was time to procure one. For this reason, the court upheld the arrest and contemporaneous search. *Coplon* v. *United States*, 191 F. 2d 749 (C. A. D. C. Cir. 1951). Certiorari was denied in both *Coplon* cases. 342 U. S. 920, 926 (1962). Moreover, the statute under which the FBI exercises that power was later said by this Court to state the constitutional standard, *Henry* v. *United States*, 361 U. S. 98, 100 (1959), since it requires "reasonable grounds to believe that the person to be arrested has committed or is committing" a felony, 18 U. S. C. § 3052, before a warrantless arrest may be made. And the Court today has declined to review a warrantless arrest under the narcotics agent statute. *Jamison v. United States*, 395 U. S. — (1969). See also my dissent in *Shipley* v. *California*, 395 U. S. — (1969).

The judgment of Congress is that federal law enforcement officers may reasonably make warrantless arrests upon probable cause, and no judicial experience suggests that this judgment is infirm. Indeed, past cases suggest precisely the contrary conclusion. The validity of federal arrests was long governed by state law, *United States* v. *Di Re*, 332 U. S. 581, 589–592 (1948), and no requirement that warrants be sought whenever there is time to do so was imposed either by common-law history [14] or by decisions of this Court. This Court has upheld an executive arrest warrant for deportation, permitting the arrest to occur without prior judicial scrutiny, *Abel* v. *United*

[14] There was no dispute between the two *Coplon* courts on this point, since it was well established that even a private person could make a warrantless arrest at common law for a felony which had actually been committed, and a peace officer could make such an arrest if he had reasonable cause to believe the offense committed. 1 Stephen, A History of the Criminal Law of England 193 (1883); 2 Hale, Pleas of the Crown 71–104 (first American ed. 1847).

States, 362 U. S. 217 (1960). And this Court has regularly affirmed the validity of warrantless arrests without any indication whatever that there was no time to get a warrant, and indeed where all the circumstances pointed to the opposite conclusion. *E. g.*, *Ker* v. *California*, 374 U. S. 23 (1963); *Draper* v. *United States*, 358 U. S. 307 (1959). The lower federal courts have certainly been of the view that warrants are unnecessary even where there is time to obtain them. *Dailey* v. *United States*, 261 F. 2d 870 (C. A. 5th Cir.), cert. denied, 359 U. S. 969 (1959) (statutory warrantless arrest by federal narcotics agents); *Smith* v. *United States*, 254 F. 2d 751, 755 (C. A. D. C. Cir.), cert. denied, 357 U. S. 937 (1958); *Mills* v. *United States*, 196 F. 2d 600 (C. A. D. C. Cir.), cert. denied, 344 U. S. 826 (1952) (*sub silentio*).

In light of the uniformity of judgment of the Congress, past judicial decisions, and common practice rejecting the proposition that arrest warrants are essential wherever it is practicable to get them, the conclusion is inevitable that such arrests and accompanying searches are reasonable, at least until experience teaches the contrary. It must very often be the case that by the time probable cause to arrest a man is accumulated, the man is aware of police interest in him or for other good reasons is on the verge of flight. Moreover, it will likely be very difficult to determine the probability of his flight. Given this situation, it may be best in all cases simply to allow the arrest if there is probable cause, especially since that issue can be determined very shortly after the arrest.

Nor are the stated assumptions at all fanciful. It was precisely these facts which moved the Congress to grant to the FBI the power to arrest without a warrant without any showing of probability of flight. Both the Senate and House committees quoted the letter of the Acting Deputy Attorney General, Peter Campbell Brown,

who in asking for the new legislation asserted: "Although it is recognized that in any felony case the person to be arrested may attempt to flee, it is also recognized that in any such case in which the defendant is arrested without a warrant in an emergency situation, such defendant may be able to present a rather convincing argument that he did not intend to flee." S. Rep. No. 2464, 81st Cong., 2d Sess., 2 (1950); H. R. Rep. No. 3228, 81st Cong., 2d Sess., 2 (1950). Some weight should be accorded this factual judgment by law enforcement officials, adopted by the Congress.

IV.

If circumstances so often require the warrantless arrest that the law generally permits it, the typical situation will find the arresting officers lawfully on the premises without arrest or search warrant. Like the majority, I would permit the police to search the person of a suspect and the area under his immediate control either to assure the safety of the officers or to prevent the destruction of evidence. And like the majority, I see nothing in the arrest alone furnishing probable cause for a search of any broader scope. However, where as here the existence of probable cause is independently established and would justify a warrant for a broader search for evidence, I would follow past cases and permit such a search to be carried out without a warrant, since the fact of arrest supplies an exigent circumstance justifying police action before the evidence can be removed, and also alerts the suspect to the fact of the search so that he can immediately seek judicial determination of probable cause in an adversary proceeding, and appropriate redress.

This view, consistent with past cases, would not authorize the general search against which the Fourth Amendment was meant to guard, nor would it broaden

or render uncertain in any way whatsoever the scope of searches permitted under the Fourth Amendment. The issue in this case is not the breadth of the search, since there was clearly probable cause for the search which was carried out. No broader search than if the officers had a warrant would be permitted. The only issue is whether a search warrant was required as a precondition to that search. It is agreed that such a warrant would be required absent exigent circumstances.[15] I would hold that the fact of arrest supplies such an exigent circumstance, since the police had lawfully gained entry to the premises to effect the arrest and since delaying the search to secure a warrant would have involved the risk of not recovering the fruits of the crime.

The majority today proscribes searches for which there is probable cause and which may prove fruitless unless carried out immediately. This rule will have no added effect whatsoever in protecting the rights of the criminal accused at trial against introduction of evidence seized without probable cause. Such evidence could not be introduced under the old rule. Nor does the majority today give any added protection to the right of privacy

[15] A search without a warrant "can survive constitutional inhibition only upon a showing that the surrounding facts brought it within one of the exceptions to the rule that a search must rest upon a search warrant. *Jones* v. *United States*, 357 U. S. 493, 499; *United States* v. *Jeffers*, 342 U. S. 48, 51." *Rios* v. *United States*, 364 U. S. 253, 261 (1960); *Stoner* v. *California*, 376 U. S. 483, 486 (1964). And "a search can be incident to arrest only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest. *Agnello* v. *United States*, 269 U. S. 20." *Stoner* v. *California*, *supra*, at 486; *James* v. *Louisiana*, 382 U. S. 36, 37 (1965). There is thus no question that a warrant to search petitioner's house would have been required had he not been arrested there. In such cases, the officers are not already lawfully on the premises, and there is not so often the same risk of the destruction of evidence nor the necessity to make an immediate search without the delay involved in securing a warrant.

of those whose houses there is probable cause to search. A warrant would still be sworn out for those houses, and the privacy of their owners invaded. The only possible justification for the majority's rule is that in some instances arresting officers may search when they have no probable cause to do so and that such unlawful searches might be prevented if the officers first sought a warrant from a magistrate. Against the possible protection of privacy in that class of cases, in which the privacy of the house has already been invaded by entry to make the arrest—an entry for which the majority does not assert that any warrant is necessary—must be weighed the risk of destruction of evidence for which there is probable cause to search, as a result of delays in obtaining a search warrant. Without more basis for radical change than the Court's opinion reveals, I would not upset the balance of these interests which has been struck by the former decisions of this Court.

In considering searches incident to arrest, it must be remembered that there will be immediate opportunity to challenge the probable cause for the search in an adversary proceeding. The suspect has been apprised of the search by his very presence at the scene, and having been arrested, he will soon be brought into contact with people who can explain his rights. As MR. JUSTICE BRENNAN noted in a dissenting opinion, joined by JUSTICES BLACK and DOUGLAS, and THE CHIEF JUSTICE, in *Abel* v. *United States*, 362 U. S. 217, 249–250 (1959), a search contemporaneous with a warrantless arrest is specially safeguarded since "[s]uch an arrest may constitutionally be made only upon probable cause, the existence of which is subject to judicial examination, see *Henry* v. *United States*, 361 U. S. 98, 100; and such an arrest demands the prompt bringing of the person arrested before a judicial officer, where the existence of probable cause is to be inquired into. Fed. Rules Crim.

Proc. 5 (a) and (c). . . . *Mallory* v. *United States,* 354 U. S. 449; *McNabb* v. *United States,* 318 U. S. 332." And since that time the Court has imposed on state and federal officers alike the duty to warn suspects taken into custody, before questioning them, of their right to a lawyer. *Miranda* v. *Arizona,* 384 U. S. 436 (1966); *Orozco* v. *Texas,* 394 U. S. 324 (1969).

An arrested man, by definition conscious of the police interest in him, and provided almost immediately with a lawyer and a judge, is in an excellent position to dispute the reasonableness of his arrest and contemporaneous search in a full adversary proceeding. I would uphold the constitutionality of this search contemporaneous with an arrest since there was probable cause both for the search and for the arrest, exigent circumstances involving the removal or destruction of evidence, and a satisfactory opportunity to dispute the issues of probable cause shortly thereafter. In this case, the search was reasonable.